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Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Customs and Patent Appeals and the United States Customs Court

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This issue contains

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 80–183)

Manmade Fiber Textile Products—Restriction on Entry

Restriction on entry of manmade fiber textile products manufactured or produced in Romania

There is published below a directive of June 9, 1980, received by the Commissioner of Customs from the chairman, Committee for the Implementation of Textile Agreements, concerning restriction on entry of manmade fiber textile products in category 635 manufactured or produced in Romania.

This directive amends, but does not cancel, that committee's directive of May 13, 1980 (T.D. 80–164).

This directive was published in the Federal Register on June 11, 1980 (45 F.R. 39528), by the committee.

(QUO–2–1)

Dated: July 2, 1980.

WILLIAM D. SLYNE
(For Chester R. Krayton,
Director, Duty Assessment Division).

U.S. DEPARTMENT OF COMMERCE,
INTERNATIONAL TRADE ADMINISTRATION,
Washington, D.C., June 8, 1980.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

DEAR MR. COMMISSIONER: This directive amends, but does not cancel, the directive of May 13, 1980 from the chairman of the Com-

mittee for the Implementation of Textile Agreements which directed you to prohibit, for the 12-month period beginning on January 1, 1980, and extending through December 31, 1980, entry into the United States for consumption and withdrawal from warehouse for consumption of manmade fiber textile products in category 635, produced or manufactured in Romania.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Wool and Man-Made Fiber Textile Agreement of June 17, 1977, as amended, between the Governments of the United States and the Socialist Republic of Romania; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on June 12, 1980, and for the 12-month period beginning on January 1, 1980, and extending through December 31, 1980, entry into the United States for consumption of manmade fiber textile products in category 635 in excess of 33,898 dozen.[1]

The action taken with respect to the Government of the Socialist Republic of Romania and with respect to imports of manmade fiber textile products from Romania has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

PAUL T. O'DAY,
Chairman, Committee for the Implementation of Textile Agreements.

(T.D. 80–184)

Recent Statutory Changes

Text of significant statutory changes made by Public Laws 96–112 and 96–275

Two recently enacted public laws amended statutes which affect segments of the international trading community, including owners of vessels documented by the United States. Public Law 96–275, approved by the President on June 17, 1980, relates to the confidentiality of

[1] The level of restraint has not been adjusted to reflect any imports after Dec. 31, 1979.

shippers' export declarations, to export data submission and disclosure requirements and information to be included in outward cargo manifests. Section 4 of Public Law 96–112, approved on November 16, 1979, the Maritime Appropriations Authorization Act for Fiscal Year 1980, contains an amendment to section 27 of the Merchant Marine Act, 1920 (46 U.S.C. 883), in the form of a new proviso relating to the use of vessels documented under the laws of the United States and owned by persons who are citizens of the United States.

In order to provide wider dissemination of these statutory changes, Public Law 96–275 is reproduced below in its entirety, followed by section 4 of Public Law 96–112. Amendments to the Customs Regulations to reflect the changes made by Public Law 96–275 are currently being drafted. No regulatory changes are required by reason of the new proviso added to 46 U.S.C., 883 by Public Law 96–112.

Dated: July 2, 1980.

JOHN T. ROTH,
Acting Director,
Regulations and Research Division.

PUBLIC LAW 96–275—JUNE 17, 1980

June 17, 1980
[H.R. 6842]

AN ACT To protect the confidentiality of Shippers' Export Declarations, and to standardize export data submission and disclosure requirements

Shippers' Export Declarations, confidentiality.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 301 of title 13, United States Code, is amended by adding at the end thereof the following new subsection:

"(g) Shippers' Export Declarations (or any successor document), wherever located, shall be exempt from public disclosure unless the Secretary determines that such exemption would be contrary to the national interest.".

Export data submission and disclosure requirement standardization.

SEC. 2. Section 4199 of the Revised Statutes (46 U.S.C. 93) is amended to read as follows:

SEC. 4199. (a) Copies of bills of lading or equivalent commercial documents relating to all cargo encompassed by the manifest required under this chapter shall be attached to such manifest and delivered to the appropriate officer of the United States Customs Service at the time such manifest is delivered.

"(b) The following information shall be included on such manifest or on attached copies of bills of lading or equivalent commercial documents:

"(1) Name and address of shipper.

"(2) Description of the cargo.

"(3) Number of packages and gross weight.

"(4) Name of vessel or carrier.

"(5) Port of exit.

"(6) Port of destination.

"(c) Except as provided in subsection (d), the following information contained on such manifest, or on attached copies of bills of lading or equivalent commercial documents, shall be available for public disclosure:

"(1) Name and address of shipper, unless the shipper has made a biennial certification claiming confidential treatment pursuant to procedures adopted by the Secretary of the Treasury.

"(2) General character of the cargo.

"(3) Number of packages and gross weight.

"(4) Name of vessel of carrier.

"(5) Port of exit.

"(6) Port of destination.

"(7) Country of destination.

Disclosure, exemptions.

"(d) The information listed in subsection (c) shall not be available for public disclosure if—

"(1) the Secretary of the Treasury makes an affirmative finding on a shipment-by-shipment basis that disclosure is likely to pose a threat of personal injury or property damage; or

"(2) the information is exempt under the provisions of section 552(b)(1) of title 5 of the United States Code.

Access procedures, establishment.

"(e) The Secretary of the Treasury, in order to allow for the timely dissemination and publication of the information listed in subsection (c) above, is authorized to establish procedures to provide access to manifests, or attached bills of lading or equivalent commercial documents which shall include provisions for adequate protection against the public disclosure of information not available for public disclosure from such manifests or attached bills of lading, or equivalent commercial documents.".

SEC. 3. Nothing in this Act shall be construed as authorizing the withholding of information from Congress. 13 USC 301 note.

SEC. 4. (a) Except as provided in subsection (b), this Act, and the amendments made by this Act, shall become effective on the later of July 1, 1980, or the date of enactment of this Act. Effective dates. 13 USC 301 note.

(b) The amendment made by section 2 shall become effective on the date which is forty-five days after the date of enactment of this Act.

Approved June 17, 1980.

PUBLIC LAW 96–112—NOVEMBER 16, 1979

AN ACT To authorize appropriations for the fiscal year 1980 for certain maritime programs of the Department of Commerce, and for other purposes

Nov. 16, 1979
[S. 640]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 4. Section 27 of the Merchant Marine Act, 1920 (46 U.S.C. 883) is amended by striking out the period at the end thereof and inserting the following new proviso: ": *Provided further*, That until April 1, 1984, and notwithstanding any other provisions of this section, any vessel documented under the laws of the United States and owned by persons who are citizens of the United States may, when operated upon a voyage in foreign trade, transport merchandise in cargo vans, lift vans, and shipping-tanks between points embraced within the coastwise laws for transfer to or when transferred from another vessel or vessels, so documented and owned, of the same operator when the merchandise movement has either a foreign origin or a foreign destination; but this proviso (1) shall apply only to vessels which that same operator owned, chartered or contracted for the construction of prior to the date of the enactment of this proviso, and (2) shall not apply to movements between points in the contiguous United States and points in Hawaii, Alaska, the Commonwealth of Puerto Rico and United States territories and possessions.".

Merchant Marine Act, amendment.

Approved November 16, 197

(T.D. 80–185)

Instruments of International Traffic

Certain polyvinyl chloride magazines used for the transportation of integrated circuits designated as instruments of international traffic

It has been established to the satisfaction of the U.S. Customs Service that translucent rigid tubular polyvinyl chloride magazines measuring 20 inches in length, tapering from 0.334 to 0.6 inch in width, and 0.496 inch in height, with a longitudinal groove in the base 0.214 inch in width and 0.266 inch in depth, and with holes punched 0.18 and 1.18 inches from each end of the magazine for plugs, designed to carry integrated circuits and marked "Antistatic-K/S Motorola IITT," are substantial containers or holders which are designed for and capable of repeated use in transportation and will be used in substantial numbers in international traffic.

Under the authority of section 10.41a(a)(1), Customs Regulations, I hereby designate the above-described polyvinyl chloride magazines as instruments of international traffic within the meaning of section 322(a), Tariff Act of 1930, as amended (19 U.S.C. 1322 (a)). These containers may be released under the procedures provided for in section 10.41a, Customs Regulations. (104556)

(BOR–7–07)

Dated: June 27, 1980.

ALFRED G. SCHOLLE,
Director, Carriers,
Drawback and Bonds Division.

U.S. Customs Service

General Notice

(19 CFR, Parts 19, 24)

Customs Warehouses and Container Stations

Proposed amendments to the Customs Regulations pertaining to fees for processing applications for bonded warehouses and container stations

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations (1) to increase the fee that must accompany an application to establish a bonded warehouse, and (2) to require a fee to accompany an application to alter an existing bonded warehouse or to establish a container station. These changes are proposed by virtue of the requirement that Federal agencies charge appropriate fees for providing special benefits to identifiable recipients above and beyond those which accrue to the general public. The proposed amendments are not considered to be significant.

DATES: Comments must be received on or before 60 days from publication in the Federal Register.

ADDRESS: Comments (preferably in triplicate) may be addressed to the Commissioner of Customs, attention: Regulations and Research Division, U.S. Customs Service, 1301 Constitution Avenue NW., room 2335, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: John Holl, Office of Inspection, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202–566–5354.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Independent Offices Appropriation Act, 1952 (31 U.S.C. 483a), the so-called User Charges Statute, requires Federal agencies to be as self-sustaining as possible. This statute authorizes the head of each

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Federal agency to establish fees for services provided to identifiable members of the public. The fees must be fair and equitable, taking into consideration the direct and indirect costs to the Government, the value to the recipient, the public policy or interest served, and other pertinent facts.

Office of Management and Budget (formerly Bureau of the Budget) Circular No. A–25, September 23, 1959, contains policy guidelines implementing 31 U.S.C. 483a. The circular states that if a service (or privilege) provides special benefits to an identifiable receipient above and beyond those which accrue to the public at large, a charge should be imposed to recover the full cost to the Government of furnishing that service. The circular also requires that the charges shall be determined or estimated from the best available agency records, and that the cost computation shall cover the direct and indirect costs to the Government of carrying out the activity, including, among other things, a proportional share of the agency's management and supervisory costs.

Although imported merchandise ordinarily is subject to entry and the payment of duty at the time and place the merchandise arrives in the United States, entry and payment of duty may be postponed in certain circumstances. For example, merchandise may be removed from the place of arrival to a Customs bonded warehouse or to a container station before entry and the payment of duty.

Bonded warehouses are secured areas within the United States in which imported merchandise may be placed for up to 5 years from the date of importation without payment of duty. Merchandise in a bonded warehouse may be stored, or manipulated, or may undergo manufacturing operations. The merchandise then may be exported, withdrawn for use as supplies on a vessel or aircraft in international traffic, destroyed under Customs supervision, or withdrawn from warehouse for consumption. No duty is collected unless and until the merchandise is withdrawn from the warehouse for consumption.

Container stations are secured areas within the United States into which containers of merchandise may be moved for the purpose of opening the container and delivering the contents before an entry is filed or duty is paid.

The procedure relating to Customs warehouses, container stations, and the control of merchandise in these areas is found in part 19, Customs Regulations (19 CFR, part 19).

BONDED WAREHOUSES

Section 19.2, Customs Regulations (19 CFR 19.2), provides, in part, that an owner or lessee desiring to establish a bonded warehouse shall file a written application with the district director of Customs

which, among other things, describes the premises, gives the location, and states the class of warehouse. As prescribed in that section and section 24.12, Customs Regulations (19 CFR 24.12), a fee of $80 must accompany the application.

Before an application may be approved, Customs must—

(1) Determine that the application is in proper form;

(2) Survey the premises to determine that all physical requirements are met;

(3) Perform a background investigation of the applicant and the applicant's officers and employees;

(4) Prepare a report of that investigation; and

(5) Review the application, survey, and background investigation report and prepare a response to the applicant.

Section 19.3, Customs Regulations (19 CFR 19.3), relates to alterations to existing bonded warehouses. Before an application to alter an existing bonded warehouse is approved, Customs must perform the same functions as are required in connection with an application to establish a bonded warehouse, except that a background investigation of the applicant and the applicant's officers and employees is not required. However, no fee presently is required to accompany an application to alter an existing bonded warehouse.

A review of the costs involved in performing these functions reveals that the $80 fee presently required with an application to establish a bonded warehouse is inadequate. As recently as November 1977, processing costs to Customs for initial applications were approximately $425, and the cost to Customs of processing an application to alter an existing bonded warehouse was approximately $195.

CONTAINER STATIONS

Section 19.40, Customs Regulations (19 CFR 19.40), provides that a container station, independent of the importing carrier, may be established at any port or other area under the jurisdiction of a district director of Customs. To establish a container station, an application must be filed with, and approved by, the District Director. However, even though the administrative costs to Customs to process the application are the same as for an application to establish a bonded warehouse, no fee now is required to accompany the application.

PROPOSED ACTION

It is proposed to amend sections 19.2, 19.3, 19.40, and 24.12, Customs Regulations (19 CFR 19.2, 19.3, 19.40, 24.12)—

(1) To delete the reference in section 19.2(a) to the $80 fee required to accompany an application to establish a Customs bonded warehouse;

(2) To provide in section 19.3(a) for a fee to accompany an application to alter a Customs bonded warehouse;

(3) To provide in section 19.40 for a fee to accompany an application to establish a container station; and

(4) To provide in section 24.12(a) for publication of a general notice in the Federal Register and the CUSTOMS BULLETIN on or about August 31 of each year which will establish the fees for the next fiscal year.

Although not specifically provided for in the proposed amendment to section 24.12, if the proposal is adopted before August 31, 1980, a general notice will be published to establish a fee schedule for the remainder of the 1980 fiscal year.

In accordance with 31 U.S.C. 483a, the fee schedule will be based on the actual current costs to Customs of processing an application to establish or to alter a Customs bonded warehouse, or to establish a container station. These costs are related closely to Customs employees' salaries and, therefore, are subject to change annually.

AUTHORITY

The authority for the proposed amendments is R.S. 251, as amended, section 624, 46 Stat. 759 (19 U.S.C. 66, 1624); section 501, 65 Stat. 290 (31 U.S.C. 483a).

INAPPLICABILITY OF EXECUTIVE ORDER 12044

This document is not subject to the Treasury Department directive of November 8, 1978 (43 F.R. 52120) implementing Executive Order 12044, Improving Government Regulations, because it was in process before May 22, 1978, the effective date of the directive.

COMMENTS

Before adopting this proposal, consideration will be given to any written comments, preferably in triplicate, that are submitted timely to the Commissioner of Customs.

Comments submitted will be available for public inspection in accordance with section 103.8(b), Customs Regulations (19 CFR 103.8(b)), during regular business hours at the Regulations and Research Division, Headquarters, U.S. Customs Service, 1301 Constitution Avenue NW., room 2335, Washington, D.C. 20229.

DRAFTING INFORMATION

The principal authors of this document were Shannon McCarthy and John Elkins, Regulations and Research Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

PROPOSED AMENDMENTS

It is proposed to amend parts 19 and 24, Customs Regulations, (19 CFR, parts 19, 24), in the following manner:

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

1. It is proposed to amend the first sentence of section 19.2(a) by deleting "of $80".

2. It is proposed to amend section 19.3(a) by adding a new last sentence to read as follows:

> * * * An application to alter a bonded warehouse shall be accompanied by the fee required by section 24.12(a)(1) of this chapter.

3. It is proposed to amend the paragraph before the bond in section 19.40 to read as follows:

19.40 Establishment of container stations.

A container station, independent of the importing carrier, may be established at any port or portion of a port, or any area under the jurisdiction of a District Director, upon the filing of an application, accompanied by the fee required by section 24.12(a)(1) of this chapter, and its approval by the District Director. The applicant also must post a bond in the following format in the sum of $25,000 or such larger amount as the District Director shall determine:

* * * * * * *

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

It is proposed to amend section 24.12(a)(1), to read as follows:

24.12 Customs fees; charges for storage.

(a) * * *

(1) A Customs fee shall accompany an application to establish or to alter a Customs bonded warehouse filed under the provisions of section 19.2 or section 19.3 of this chapter, or an application to establish a container station filed under the provisions of section 19.40 of this chapter. A general notice shall be published annually in the Federal Register and the CUSTOMS BULLETIN on or about August 31 to establish the fees to be effective during the next fiscal year.

In accordance with 31 U.S.C. 483a, the fee shall be sufficient to cover the cost to Customs of processing the application.

No fee shall be collected in connection with any application to discontinue a Customs bonded warehouse, or to reactivate a Customs bonded warehouse after its temporary suspension unless

an alteration has taken place during the period of suspension, or for a cargo security survey of a container station.

* * * * * * *

WILLIAM T. ARCHEY,
Acting Commissioner of Customs.

Approved: June 19, 1980.
RICHARD J. DAVIS,
Assistant Secretary of the Treasury.

U.S. Customs Service

Customs Service Decisions

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

The following are decisions made by the U.S. Customs Service where the issues involved are of sufficient interest or importance to warrant publication in the CUSTOMS BULLETIN.

Dated: July 8, 1980.

HARVEY B. FOX
(For Director, Office of
Regulations and Rulings).

(C.S.D. 80-78)

Conditionally Free Merchandise: Whether Emergency War Material must be Under Contract at the Time of Entry or Withdrawal

Date: August 6, 1979
File: ENT-1-01 R:E:E
710831 M

This ruling concerns the importation of emergency war material.

Issue.—In order to obtain the benefit of the duty-free entry provision set forth in item 832.00 of the Tariff Schedules of the United States (TSUS), must the article involved be under contract to the appropriate military agency at the time the merchandise is entered for consumption or withdrawn from warehouse for consumption?

Facts.—An importer is a distributor of emergency war material, such as tubing, pipe, rod, bars, and other such material, for various military agencies, especially the Navy. The importer's system of accounting for such merchandise is approved by the Department of Defense and all sales to the military are documented by one contract number and D.O. rating.

Very often the importer must purchase the materials in quantities in excess of the amount that is needed for any one contract. The importer requests permission to import and enter for consumption

the entire quantity (including that quantity not under contract at the time the merchandise is entered for consumption) free of duty under item 832.00 TSUS. For that quantity in excess of the amount contracted for, he proposes to post bond for the producing of its certification by a military agency within 6 months from the date the merchandise is entered for consumption. Within that 6-month period, the importer expects to be able to sell under contract the excess amount to a military agency and therefore be able to provide Customs with the required certificate. If during this 6-month period the importer is unable to sell any of the excess quantity of merchandise entered for consumption, he would tender duty at the end of that period for that amount he was unable to sell during the 6-month period to a military agency.

Law and Analysis.—Item 832.00 of the Tariff Schedules of the United States (TSUS) provides that material certified to the Commissioner of Customs by the authorized procuring agencies to be emergency war material may be admitted free of duty. Section 10.102(b) of the Customs Regulations provides that the required certification from the military agency should be submitted when the merchandise is entered for consumption or withdrawn from warehouse for consumption.

Section 141.66 of the Customs Regulations permits the posting of a bond for the production of a document which is not available when the merchandise is entered for consumption. Section 113.42 of the Customs Regulations provides that the normal time period for the production of such document is 6 months from the date of the transaction in connection with which such bond was given (which, in this case, would be the time when the merchandise was entered for consumption).

We believe that the appropriate law and regulations cited above look to the status of the merchandise at the time it is entered or withdrawn for consumption. Section 141.66 and 113.42 of the Customs Regulations merely enable the importer to post bond and produce the required documentation (in this instance, the certification from the military department) at a time subsequent to when the merchandise was entered for consumption. However, the merchandise must be entitled to duty-free entry under item 832.00, TSUS, when it was entered for consumption. The quantity of merchandise which was not covered by a military contract when such merchandise was entered for consumption would not qualify at the time of entry for consumption for duty-free entry under item 832.00, TSUS, because this merchandise was not entered pursuant to a military procurement.

We offer this procedure as a possible solution to the importer's dilemma. Instead of entering for consumption the quantity of mer-

chandise not covered by a military contract, he could enter such merchandise in a Customs bonded warehouse. Such merchandise could remain in the warehouse until the importer is able to sell this merchandise to a military agency. (Of course, there is a limitation of 5 years from the date of importation as to the length of time merchandise may remain in a Customs bonded warehouse, but under the facts set forth in this case the importer's merchandise would be sold and withdrawn from warehouse before such time period had expired.) After the importer has sold his merchandise to the military, he could then withdraw such merchandise from the warehouse for consumption free of duty by filing the required certificate with his warehouse withdrawal for consumption.

Holding.—In order to obtain the benefit of duty-free entry under item 832.00 TSUS, the article involved must be under contract to the appropriate military agency at the time the merchandise is entered for consumption or withdrawn from warehouse for consumption.

(C.S.D. 80–77)

Prohibited and Restricted Importations: Trademark Infringement; Watches; Substantial Likelihood of Confusion

Date: August 8, 1979
File: TMK–3–R:E:E
710451 SO

This ruling concerns the applicability of the prohibition set forth in section 526 of the Tariff Act of 1930, as amended (19 U.S.C. 1526), against the importation into the United States of merchandise of foreign manufacture bearing an American trademark.

Issue.—Would the importation of watches bearing the mark, "Bolivia," on the face infringe upon the rights of the owner of the registered trademark, "Bulova," for watches, watch movements and parts thereof, and watchcases.

Facts.—Watches bearing the mark, "Bolivia," manufactured in Hong Kong by several manufacturers, have been imported into the United States. The attorney for the trademark owner and Customs officers at New York are both seeking a ruling as to whether these shipments inıringe upon the rights of the American trademark owner, Bulova Watch Co., Inc., which has recorded their registered trademark, "Bulova," with Customs for import protection. The trademark registration is for watches, watch movements and parts thereof, and watchcases.

322-277 O - 80 - 3

The Bulova Watch Co., Inc., and their attorney, have submitted several letters, with attachments, documenting their efforts to protect their trademark against infringing watch importations. Bulova has already commenced several suits to enjoin the sale of watches bearing the "Bolivia" mark and have received relief in the form of consent decrees and restraining orders from several Federal courts. In addition, we understand that the prosecuting attorney, Fifth Judicial District, State of Arkansas, is prosecuting several peddlers of "Bolivia" watches for violation of an Arkansas criminal statute entitled "Criminal Simulation." 2,000 watches bearing the "Bolivia" mark were confiscated. Bulova submitted three samples of the imported watches to Customs for comparison purposes.

Law and analysis.—Section 526 of the Tariff Act of 1930, as amended, (19 U.S.C. 1526) prohibits the importation into the United States of any merchandise of foreign manufacture bearing a trademark owned by a corporation created or organized within the United States, provided a copy of such trademark registration is filed with the Secretary of the Treasury and recorded in the manner provided by regulations (19 CFR 133.1–133.7). Any such merchandise bearing a counterfeit mark, within the meaning of section 45 of the act of July 5, 1946 (commonly referred to as the Lanaham Act, 60 Stat. 427; 15 U.S.C. 1127), imported in violation of the provisions of section 42 of the act of July 5, 1946 (15 U.S.C. 1124), shall be seized, and, in the absence of written consent of the trademark owner, forfeited for violations of the Customs laws.

The term "counterfeit" is defined in the law (15 U.S.C. 1127) as a spurious mark which is identical with, or substantially indistinguishable from, a registered mark. Since the mark "Bolivia," is not identical to "Bulova," it is not considered to be a counterfeit mark within the definition cited above, and future shipments would not be subject to the procedures set forth in 19 U.S.C. 1526(e) and section 133.23a of the Customs Regulations (19 CFR 133.23a) for notice to the trademark owner, seizure and forfeiture to the Government, and disposition of forfeited merchandise in accordance with 19 CFR 133.52(c) in the absence of written consent of the trademark owner to an alternative disposition.

Infringement of federally registered marks is governed by the test of whether defendant's use is likely to cause confusion, or to cause mistake, or to deceive. In considering the question of whether or not the marks are confusingly similar, we note that both marks have been applied to watches, and that the sound and appearance of "Bulova" and "Bolivia" are strikingly similar. Under the normal test applicable to unsophisticated buyers of a product at retail, we

are of the opinion that there would be a substantial likelihood of confusion.

The trademark "Bulova," has been in continuous use by the Bulova Watch Co., Inc., and its predecessor, J. Bulova Co., since 1907. It appears to us that the manufacturers and importers of "Bolivia" watches are latecomers in the industry. In a situation such as this, any doubts regarding likelihood of confusion should be resolved in favor of the prior user of the mark. The theory behind this is that the newcomer's field of selection of a mark is not so limited as to require the adoption of a mark likely to cause confusion. Accordingly, entry of the imported watches bearing the mark "Bolivia," would be prohibited entry into the United States as infringing the registered trademark "Bulova."

Holding.—Importations of watches bearing the infringing mark, "Bolivia," should be detained pursuant to section 133.22 of the Customs Regulations (19 CFR 133.22). Articles detained pursuant to 19 CFR 133.22 may be released to the importer during the 30-day period of detention if any of the circumstances allowing exemption from trademark restrictions set forth in 19 CFR 133.21(c) are established. A copy of this ruling is being furnished to all Customs officers for their guidance.

(C.S.D. 80–78)

Carrier Control: Use of Foreign-Built Vessel as Classroom in U.S. Territorial Waters

Date: August 8, 1979
File: VES–3–04–R:CD:C
104152 DR

This ruling concerns the use of a foreign-built vessel on which to conduct courses in marine law enforcement work.

Issue.—Whether a foreign-built vessel may be used while moored in ports in the United States for the conducting of classes in marine law enforcement-related courses.

Facts.—It is intended to use a (named) 43-foot, cutter-rigged sailing vessel built in Taiwan to hold classes in marine theft prevention and demonstrations of marine security devices to local law enforcement agencies and other parties interested in marine police matters. The vessel will be operated in various U.S. ports. All classes held on the vessel will be while the vessel is moored in a port. At no time will any person, other than the teaching staff, be on board the vessel while it is in transit. The vessel will not engaged in the transportation, sale, or distribution of any merchandise from port to port.

Law and analysis.—Pursuant to the provisions of title 46, United States Code, sections 11, 289, and 883, foreign-built vessels are prohibited from engaging in the coastwise trade. The term "coastwise trade" is defined as the transportation of passengers or merchandise between points embraced within the coastwise laws of the United States, and the transportation of passengers entirely within the territorial jurisdiction of the United States. If the vessel remains moored to a pier while the classes or demonstrations are conducted, the coastwise laws will not be involved with respect to those persons attending.

Anyone who is connected with the operation, navigation, ownership, or business of a vessel is not considered to be a passenger. Therefore, the teaching staff would not be considered to be transported in violation of the coastwise laws when the vessel is in transit.

The legitimate equipment of a vessel is not considered to be merchandise and may be carried on board a foreign-built vessel between ports in the United States without being considered as transportation in violation of the coastwise laws.

Holding.—There is no law administered by the Customs Service which would prohibit the use of a foreign-built vessel for the holding of classes and the demonstration of equipment related to these classes while the vessel is moored to shore facilities. Nor is there any law administered by Customs which would prohibit the carriage on a foreign-built vessel between points in the United States of equipment or of persons connected with the operation, navigation, or ownership of the vessel.

(C.S.D. 80–79)

Instruments of International Traffic: Containers, End Covers, and Skids

Date: August 10, 1979
File: BOR–7–R:CD:C
104020 JL

This ruling concerns a request that certain devices be designated as "Instruments of International Traffic" within the meaning of 19 U.S.C. 1322(a).

Issue.—Do the containers, end covers, and skids described below, which are used in the transportation of large steam turbine parts, qualify for designation as instruments of international traffic?

Facts.—There are actually four devices under consideration. They are low-pressure rotor containers, generator rotor containers, generator end covers, and generator stator skids. All of the devices are built with the use of heavy structural steel plate. The low-pressure rotor containers and generator rotor containers completely enclose the

assemblies they are to carry. The skid of course is a platform upon which the generator stator rests. At each end of a generator are two end covers which are bolted onto its body. All of the devices have an estimated useful life of a minimum of 20 years and a total of 11 pieces are in use in international traffic at this time.

Law and analysis.—To qualify as an instrument of international traffic within the meaning of 19 U.S.C. 1322(a), an article must be used as a container or holder, must also be substantial, suitable for and capable of repeated use, and used in significant numbers in international traffic.

Section 10.41a, Customs Regulations, provides that lift vans, cargo vans, shipping tanks, skids, pallets, and similar devices, along with repair components, are designated as instruments of international traffic within the meaning of section 1322(a). The devices described above are similar to shipping tanks, lift vans, cargo vans, and skids. Further, each article is substantial in construction, suitable for and capable of repeated use, and used in significant numbers in international traffic, considering the type of merchandise transported.

Holding.—The low-pressure rotor containers, generator rotor containers, generator end covers, and generator stator skids described above are held to be instruments of international traffic and therefore may be released in accordance with section 10.41a of the Customs Regulations.

(C.S.D. 80–80)

In-Bond Entries: Steel Ingots Entered Temporarily Free of Duty Under Bond for Processing under Item 864.05, TSUS; Abandonment of Valuable Waste

Date: August 14, 1979
File: CON–9–R:CD:D JB 210405

Issue.—Whether item 864.05, Tariff Schedules of the United States (TSUS), a provision for temporary importation under bond (TIB), may be applied to an importation of steel ingots for processing, in which valuable waste resulting from the manufacture is abandoned to the U.S. manufacturer.

Facts.—The importer proposes to enter steel ingots into the United States from Canada under the above-cited TIB provision. A U.S. manufacturer will process the steel ingots into hot rolled steel bands for exportation to Canada. As a result of the manufacturing process a certain amount of scrap waste will be generated, some recoverable and some not. The importer seeks a ruling that such recoverable waste

may be abandoned to the U.S. manufacturer without violation of the terms of the TIB.

Law and analysis.—Item 864.05, TSUS, provides for temporary free importation under bond of "Articles to be repaired, altered, or processed (including processes which result in articles manufactured or produced in the United States)," when not imported for sale or sale on approval. Merchandise imported under item 864.05, TSUS, in addition to the general TIB requirements outlined in headnote 2(b) of schedule 8, part 5, subpart C, TSUS, is subject to two specific requirements, as follows:

> (b) if any processing of such merchandise results in an article * * * manufactured or produced in the United States—
>
> (i) a complete accounting will be made to the Customs Service for all articles, wastes, and irrecoverable losses resulting from such processing, and
>
> (ii) all articles and valuable wastes resulting from such processing will be exported or destroyed under Customs supervision within the bonded period.

The importer estimates that an up-the-chimmey loss of approximately 1 percent will result from the manufacturing process. This is an irrecoverable loss, the nonexportation of which will not violate the conditions of the TIB. It is, of course, subject to the accounting requirement of (b)(i) detailed above.

There will also result a recoverable waste of approximately 4 percent. The importer states that the cost involved in exporting the scrap would outweigh the value of the scrap to them. It is thus argued that, as applied to them, the scrap be deemed to be of no commercial value. Such a finding would free the importer to abandon the scrap to the U.S. manufacturer without violating the exportation requirement of the TIB.

The test to be applied in regard to waste under item 864.05, TSUS, is commercial value. (American Gas Accumulator Co. v. U.S. T.D. 43642, 56 T.D. 368 (1929)). As consistently interpreted by the Customs Service, this refers to any value as an article of commerce, not value relative to cost in a particular context. Although it may not be economically profitable for the importer here to export his waste scrap, the scrap clearly has commercial value. That value may be, and often is, reflected in the cost of processing charged by the manufacturer to whom the scrap will be abandoned. In addition to evidencing the commercial value of the scrap such agreement would likely violate the TIB condition prohibiting importation of goods for sale or sale on approval. At any rate, the fact that the scrap does have commercial value under standards consistently applied by the Customs

Service precludes a finding that the scrap does not have value within the meaning of subparagraph (b)(ii) of the TIB headnote.

The importer urges, alternatively, a Customs Service holding that liquidated damages under an 864.05, TSUS, entry will be mitigated, in those cases where exportation is not economically feasible, to the amount of duty that would have been payable on the scrap if imported in that condition. It is, however, not possible for the Customs Service to issue a ruling on prospective claims for mitigation of damages. Each such claim must be considered on its own merits. The importer's suggestion would involve the Customs Service in an effective evasion of the statutory TIB export or destroy requirement in these cases. There is no authority for such a disregard of the statute.

Reference is made to the recently enacted Public Law 95–508 which accords duty-free treatment to "metal articles imported to be shredded or otherwise processed in such a way as to render them fit only for recovery of their metal content." It is urged that Customs apply this provision to the amount of imported steel that resulted in scrap as a product of the manufacture. Inasmuch as the steel ingots might be eligible for duty-free entry if processed into scrap, the importer suggests Customs recognize an intent that 4 percent of a shipment be processed into scrap, and hold that such scrap may be retained by the U.S. manufacturer without violating the TIB.

Assuming the applicability of Public Law 95–508 to the steel here in question, it does not follow that the valuable waste resulting from the manufacture of TIB goods may be retained by the U.S. manufacturer. The statutory requirement for destruction or exportation is clear. It was not amended or otherwise affected by Public Law 95–508. Although the steel might be duty free in some circumstances it does not thereby avoid the statutory TIB requirements when entered under a temporary importation bond.

The importer's claim that any portion of the steel is imported to be processed in order that it be "fit only for recovery of * * * metal content" (Public Law 95–508) is not tenable. In fact, there is no intent to produce scrap; the intent is to produce steel bands, as a consequence of which some waste scrap may be generated. This fact is emphasized inasmuch as it would not be possible to designate what part of a steel shipment was intended for scrap and what part for production of steel bands. This law, and others relating to the duty status of scrap, are not relevant to the issue here. The temporary importation provision is a grant of privilege, and, as such, is strictly construed. The obligation to export or destroy valuable waste is clear. Any arrangement contemplating noncompliance with the statutory requirements would preclude entry under TIB. Failure to comply with the requirements, once entry was made, would result in a demand for

liquidated damages under the bond. Any possible mitigation would be a separate issue.

Although the TIB procedure is not proper in this case, the drawback law under section 1313, title 19, United States Code, appears applicable to the facts described. Under drawback, a manufacturer may manufacture articles with the use of imported merchandise and after the exportation of the articles, 99 percent of the duties paid on the imported merchandise used in the manufacturing process may be refunded as drawback upon compliance with part 22 of the Customs Regulations. Valuable waste resulting from the manufacturing process need not be destroyed or exported.

Holding.—When waste steel scrap, resulting from the manufacturing of steel ingots into steel bands, is retained by the U.S. manufacturer of the steel bands, the steel ingots are not eligible for entry into the U.S. under item 864.05, TSUS, a provision for temporary importation under bond.

(C.S.D. 80–81)

In-Bond Entries: Diamonds Entered Temporarily Free of Duty Under Bond for Evaluation, and If Suitable, for Cutting; Item 864.05, TSUS

Date: August 14, 1979
File: CON–9–R:CD:D MR 210708

Issue.—Whether diamonds may be entered under item 864.05, Tariff Schedules of the United States (TSUS), for evaluation, and, if found by the evaluation to be suitable for cutting?

Facts.—A firm imports diamonds into the United States under a temporary importation bond (TIB) for cutting. The diamonds are evaluated after entry and some are found to be unsuitable for cutting. The firm wishes to satisfy the terms of the TIB by exporting the diamonds without first cutting them.

Law and analysis.—Item 864.05, TSUS, lists "Articles to be repaired, altered, or processed (including processes which result in articles manufactured or produced in the United States)" as being eligible for temporary importation under bond. It has been held that cutting and polishing which results in a finished gemstone constitutes a process of manufacture or production. On the other hand, the evaluation of the diamonds to determine their suitability for cutting does not constitute a processing for the purposes of item 864.05.

In order to enter articles under item 864.05, there must be an intention at the time of entry that the articles will actually be repaired,

altered, or processed. If the diamonds must be evaluated after entry before the importer will know if they are actually going to be cut, then he cannot have the requisite intention at the time of entry.

Holding.—Diamonds may not be entered under item 864.05, TSUS, if the importer intends to cut the diamonds only if they are found after entry to be suitable for cutting.

Possible alternative.—Diamonds may be entered into a Customs manipulation warehouse, class 8, as explained in part 19 of the Customs Regulations (19 CFR, part 19). The diamonds may be transferred to another designated location for evaluation, as provided in section 562 of the Tariff Act of 1930, as amended (19 U.S.C. 1562). Those diamonds found to be suitable for cutting may then be withdrawn from the warehouse under item 864.05, TSUS, for cutting.

(C.S.D. 80–82)

Vessels: Whether a Self-Propelled Drilling Structure Is a Vessel

Date: August 14, 1979
File: VES–3–15–R:CD:C
103905 TL

This ruling concerns the classification of a self-propelled drilling structure, its equipment and stores, and articles delivered to it once it is attached to the U.S. Outer Continental Shelf.

Issues.—(1) Is a self-propelled foreign registered drilling structure which sails to the United States under its own power a vessel, as that term is used in general headnote 5(e), Tariff Schedules of the United States (TSUS)?

(2) If this structure is a vessel, is it and its equipment and stores dutiable when it enters a U.S. port?

(3) If this structure is a vessel, is it and its equipment dutiable once it is affixed to the seabed of the U.S. Outer Continental Shelf?

(4) Is foreign equipment delivered to the vessel dutiable after the vessel is affixed to the seabed of the U.S. Outer Continental Shelf?

(5) Would the answer to issue 4 be different if the equipment did not first pass through a U.S. port of entry?

Facts.—A foreign-flag, self-propelled drilling structure with equipment and stores aboard will sail to the United States and subsequently attach itself to the seabed of the U.S. Outer Continental Shelf. Once attached, drilling operations will begin.

Law and analysis.—Section 401(a), Tariff Act of 1930 (19 U.S.C. 1401(a)), defines the term "vessel" to include "every description of

water craft or other contrivance used, or capable of being used, as a means of transportation in water," except aircraft.

General headnote 5(e), TSUS, states that vessels which are not yachts or pleasure boats are not articles subject to the TSUS.

Section 1446 of title 19, United States Code (19 U.S.C. 1446), states:

> Vessels arriving in the United States from foreign ports may retain on board, without the payment of duty * * * other ships' stores, sea stores, and the legitimate equipment of such vessels.

The provisions of section 4(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1333(a)), extend the Customs and navigation laws to artificial islands and devices permanently or temporarily attached to the seabed which are erected onto the Outer Continental Shelf for the purpose of exploring for or developing its natural resources.

Section 401(a) indicates that if a drilling structure is used or can be used on water for transportation it is a vessel. This drilling structure will sail to the United States; it is therefore classifiable as a vessel. According to general headnote 5(e), vessels are not dutiable unless they are yachts or pleasure boats. The subject drilling structure is neither a yacht nor a pleasure boat. It is not, therefore, dutiable. If the equipment and stores which are carried aboard the vessel are retained on board, they are free of duty pursuant to section 1446.

C.S.D. 79–1 held that foreign-built articles (including drilling and production platforms) which are not vessels are dutiable when secured to or submerged onto the seabed of the Outer Continental Shelf. However, because the subject rig is a vessel it is not within the purview of C.S.D. 79–1 and thus is not dutiable.

The dutiable provisions of the TSUS are Customs laws. They are extended to artificial islands by section 4(a) of the Outer Continental Shelf Lands Act. Headquarters case 056583, dated May 11, 1978, held that when equipment is brought to an artificial island it is dutiable. Thus, foreign equipment which is delivered to the subject structure after it is attached will be dutiable. Of course if the foreign equipment is regularly imported into the Customs territory (entered and duty paid) and thereafter removed to a structure, it will not again be dutiable.

Additionally, T.D. 54281(1) holds that the coastwise laws apply to such structures during the time they are secured to or submerged onto the seabed of the Outer Continental Shelf for drilling operations. Accordingly, any merchandise or passengers transported between other coastwise points and these structures must be accomplished by coastwise qualified vessels, pursuant to 46 U.S.C. 883 and 289, respectively.

The arrival of a foreign vessel at a point within United States territorial waters subjects the vessel to certain requirements of the navigation laws. Local Customs officials should be consulted concerning these requirements.

Holdings.—(1) A selt-propelled drilling structure which sails to the United States under its own power is a vessel, as this term is used in general headnote 5(e), Tariff Schedules of the United States.

(2) Equipment and stores which are on the vessel when it enters U.S. jurisdiction are not dutiable unless they are subsequently landed and delivered.

(3) A vessel is not dutiable when it is affixed to the seabed of the Outer Continental Shelf.

(4) Foreign equipment and stores delivered to a vessel secured to or submerged onto the Outer Continental Shelf to explore for, develop, or produce resources are dutiable when delivered directly from a foreign port.

(5) Foreign equipment and stores delivered to a vessel secured to, or submerged onto the Outer Coutinental Shelf to explore for, develop, or produce resources, are not dutiable when delivered if they are first imported into the Customs territory and duty is paid.

(C.S.D. 80–83)

Carrier Control: Transportation of Fish-Processing Supplies Between a U.S. Port and a Point Within U.S. Territorial Waters

Date: August 14, 1979
File: VES–3–17–R:CD:C
104111 JL

This ruling concerns the transportation of fish-processing supplies between a U.S. port and a point within U.S. territorial waters.

Issue.—May a foreign-built, U.S.-documented vessel transport salt between a U.S. port and a point within U.S. territorial waters and there transship it to a U.S.-built, U.S.-documented vessel for use in processing fish?

Facts.—It is contemplated that a noncoastwise-qualified, U.S.-documented vessel will be utilized to transport salt used for fish processing from a U.S. port to a position within U.S. territorial waters were it would tie up to a U.S.-built, U.S.-documented, fish-processing vessel. Upon tying up, the subject vessel will process the salt into brine and pump it into the fish-processing vessel where it would be used in processing fish. The requester asks if the foregoing activities

would violate any law or regulation administered by the Customs Service.

Law and Analysis.—Title 46, United States Code, section 883, prohibits the lading of merchandise on board a vessel at one point within the United States, including its territorial waters, and the subsequent unlading of the merchandise at another point in territorial waters (to another vessel or otherwise) or at another port in the United States, or any other point embraced within the coastwise laws by a vessel not qualified to engage in the coastwise trade.

Section 4.80b(a), Customs Regulations, as amended July 19, 1979 (see 44 F.R. 140, p. 42178), states in part that

> merchandise is not transported coastwise if at an intermediate port or place *other than a coastwise point* * * * it is manufactured or processed into a new and different product, and the new and different product thereafter is transported to a coastwise point. [Italic supplied.]

In the instant case, the salt is processed into brine at a coastwise point where it is then transshipped to another vessel. This is a strictly coastwise movement not conforming to the exception stated in section 4.80b(a). Accordingly, there is no need to consider whether the processing of salt into brine yields a new and different product within the meaning of the regulation.

The transportation of the salt from a U.S. port to a point within territorial waters and its subsequent transshipment at that point to another vessel constitutes a movement in coastwise trade. Accordingly, pursuant to section 883, a vessel not qualified to engage in the coastwise trade cannot engage in the contemplated activity without incurring penalties provided by the statute.

Holding.—The carriage of salt from a U.S. port to a point within U.S. territorial waters where it is processed into brine and transshipped to another vessel is a coastwise transportation reserved to those vessels documented to engage in the coastwise trade pursuant to 46 U.S.C. 883.

(C.S.D. 80–84)

Personal Exemptions: Tools of Trade

Date: August 14, 1979
File: BAG–5–05–R:E:E
710375 HS

This ruling concerns a "tools of trade" exemption from duty for video equipment exported and returned to the United States by a corporation.

Issue.—Can foreign-made video equipment that is exported and then returned to the United States by a corporation be exempt from duty under item 810.20 of the Tariff Schedules of the United States as tools of trade?

Facts.—A corporation purchased foreign-made video equipment in the United States. The video equipment is used for safety surveillance of reactor technicians while they work in oxygen-free environments and is utilized during large overseas jobs. The equipment is assigned to the director of video service training who is responsible for its whereabouts and proper operation. The director requests whether the corporation may be exempt from paying duty each time it reimports the equipment.

Law and analysis.—There is no specific provision that exempts from duty merchandise consigned to and entered by or for the account of a corporation. Item 810.20 of the Tariff Schedules of the United States (1978) provides duty-free entry for tools of trade, occupation, or employment which have been taken abroad by or for the account of any person arriving in the United States for a foreign country. This is a personal exemption available to individuals.

A corporation could bring equipment into the United States under this exemption if an individual of the corporation takes the equipment in and out of the country in his own name. T.D. 53136 makes this possible by providing that ownership of tools of trade is not a condition for free entry. Merchandise of domestic or foreign origin exported from the United States and reimported by the same individual, even though the equipment or tools are not his personal property, can qualify for free entry under item 810.20.

In this case, the video equipment can be exempt from duty as tools of trade if the equipment is exported and returned to the United States by or for the account of an individual empolyee of the corporation, such as the director of video service/training. The individual must, however, be in the foreign country when the equipment is in the foreign country and must return to the United States when the goods return.

Holding.—Foreign-made video equipment that is exported and then returned to the United States by an individual employee of a corporation may be exempt from duty under item 810.20 of the Tariff Schedules of the United States as tools of trade.

(C.S.D. 80–85)

Brokers: Power of Attorney; Appointment of Subagent

Date: August 14, 1979
File: BRO–4–01–R:E:E
710803 MK

Facts.—A customhouse broker licensed in district A files entries in his name as the importer of record. He is not licensed in district B. He proposes to grant a power of attorney to a broker in that district, to prepare entries naming the broker in district A as the importer of record. The broker in district B asks whether this proposal is permissible under Customs regulations.

Issue.—May a broker in district A grant a power of attorney to a broker in district B (where he is not licensed) to file entries naming the broker in district A as the importer of record?

Law and analysis.—Section 141.43 of the regulations provides that the grantee of a power of attorney from a resident principal cannot appoint a subagent unless the grantee is a customhouse broker, in which case the power of attorney may empower the broker to act through any of his licensed officers or authorized employees.

In the proposed arrangement, the broker in district B is not an employee of the broker in district A, but would, nonetheless, be acting as agent of the broker in district A. We believe such arrangement is precluded by section 141.43 of the regulations.

This situation is distinguishable from that in C.S.D. 95–111, in which we held that section 141.43 of the regulations would not preclude an importer from issuing a power of attorney to a broker in one district, empowering that broker to issue, on the importer's behalf, powers of attorney to brokers in other districts because those brokers, once appointed, would act solely on behalf of the importer, and will bear no agency relationship to the broker who appointed them.

Holding.—A broker in one district may not, by power of attorney, authorize a broker in another district (where he is unlicensed) to file entries naming him as importer of record.

(C.S.D. 80–86)

Administrative Exemptions: Applicability of 19 U.S.C. 1321(a)(1) to Informal Entries and Baggage Declarations

Date: August 14, 1979
File: ENT–1–01–R:E:E
710812 M

This ruling concerns the applicability of the provision of 19 U.S.C. 1321(a)(1) to informal entries and baggage declarations.

Issue.—May Customs, pursuant to 19 U.S.C. 1321(a)(1), disregard a difference of less than $10 between the amount deposited on an informal entry or a baggage declaration and the amount actually due?

Facts.—A District Director points our two occurrences that happened recently in his district. In the first instance, an informal entry was presented to Customs cashier who deposited the check and forwarded the permit copy to the Customs inspector for examination and delivery. Upon examination the Customs inspector discovered that the merchandise was incorrectly classified and that less than $10 additional duty should be collected.

In another situation, a passenger presented his baggage declaration to a Customs inspector and paid duties. Subsequently, the Customs inspector reviewed the baggage declaration after the passenger had left the inspection area and discovered that additional duty less than $10 was due.

Law and analysis.—Section 205(a) of Public Law 95–410 amended 19 U.S.C. 1321(a)(1) to provide that in order to avoid expense and inconvenience to the Government disproportionate to the amount of revenue that would be otherwise be collected, Customs may disregard a difference of less than $10 between the amount of duties or taxes deposited with respect to any entry of merchandise and the total amount of duties and taxes actually accruing on such merchandise. Prior to this amendment, 19 U.S.C. 1321(a)(1) permitted a difference of only less than $3.

19 U.S.C. 1321(a)(1) states that its provision applies to any entry of merchandise. We believe this terminology to be broad enough to cover informal entries and baggage declarations. Since in both instances the difference between the amount of duties deposited and the actual amount of duties due was less than $10, Customs had the authority pursuant to 19 U.S.C. 1321(a)(1) to disregard the difference.

Holding.—19 U.S.C. 1321(a)(1), which permits Customs to disregard a difference of less than $10 between the amount of duties deposited and amount of duties actually due applies to informal entries and baggage declarations.

(C.S.D. 80–87)

Warehouse: Lease of Space in Class 2 Private Bonded Warehouse

Date: August 16, 1979
File: WAR–1–03–R:CD:D
210677 JB

Issue.—Whether the owner and proprietor of a private bonded warehouse (class 2) may lease space in the warehouse to a third party in order that goods in the warehouse, pledged as collateral, be secured by the third party.

Facts.—The proprietor and owner of a class 2, importer's private bonded warehouse, requests a collateral control company (company) to take possession of some of his goods stored in the warehouse, in order to secure a loan. The company seeks to lease from the warehouse proprietor that portion of the warehouse in which the pledged goods are located. The right to withdraw the goods will be transferred to the company (19 CFR 144.21–144.28) but the warehouse owner will retain title to the merchandise. This is essentially a paper transaction, with no actual movement of goods contemplated. The company believes that it needs the lease to conduct its operations properly, and inquires whether such an agreement would be permissible.

Law and analysis.—The transfer of the right to withdraw inventory from the warehouse is clearly provided for in the Customs Regulations, sections 144.21–144.28. (19 CFR 144.21–144.28) Inasmuch as the goods will remain the legal property of the warehouse owner, the transfer does not conflict with the requirement that a class 2 warehouse be used exclusively for storage of merchandise owned by or consigned to the proprietor.

The collateral company suggests that Customs revenue would be thoroughly protected by its general term bond, and by the obligations arising from its status as transferee. Customs revenue as to the duties owed would be so protected but whether the obligations assumed in the proprietor's warehouse bond (CF 3581) by the warehouse owner's surety would cover space leased to another party is not clear. Assuming that it would, or that surety would stipulate that coverage would so extend, the threat to Customs revenue might be obviated.

The proprietor of a Customs bonded warehouse operates under a bond approved by the Government (19 CFR 19.2). Application for such a bond must be made by an individual proprietor and approved by the Government. The bond is subject to revocation or suspension for good cause (19 CFR 19.3). There is created a relationship of reciprocal rights and duties between a proprietor and the Government; if a proprietor were permitted to transfer his bond to a third party

such person could, in effect, become a warehouse proprietor without making application to or being approved by the Government. Although the Customs revenue would still be secure, the control over whom, personally, would be granted the bond to operate the warehouse facility would be lost. It is the position of the Customs Service that no substantial reason exists to relinquish that authority; in fact, it is in the public interest that the Government maintain control over the bonding of warehouse proprietors.

Holding.—The owner and proprietor of a class 2 Customs bonded warehouse may not lease space in that warehouse to a third party.

(C.S.D. 80-88)

Country of Origin: Frozen Orange Juice Concentrate Reconstituted in Canada from Brazilian or American Concentrate

Date: August 17, 1979
File: MAR-2-05-R:E:E
710823 HS

This ruling concerns country-of-origin marking on frozen orange juice concentrate that is reconstituted in Canada.

Issue.—How should frozen orange juice concentrate that is reconstituted in Canada from either Brazilian or Florida concentrate be marked if on the container in which the orange juice is sold appears the name of a U.S. distributor?

Facts.—Frozen orange juice concentrate from either Florida or Brazil or a blend of concentrate from both areas will be reconstituted in Canada. The container in which the orange juice will be sold will bear the name of a U.S. distributor.

Law and analysis.—Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304) provides in general that all articles of foreign origin imported into the United States be legibly and conspicuously marked to indicate the English name of the country of origin to an ultimate purchaser in the United States.

Section 134.1, Customs Regulations, defines "country of origin" as the country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such country the country of origin.

In this case, frozen orange juice concentrate from either Brazil or Florida will be shipped to Canada where it will be reconstituted. Reconstitution of the orange juice concentrate is considered a substantial transformation of the frozen concentrate as the concentrate

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is changed into a new and different product—juice. Therefore, the reconstituted orange juice should be marked with Canada as the country of origin.

The container in which the orange juice will be sold will be marked "Distributed by" followed by the name of a U.S. company. Section 134.46 of the Customs Regulations provides that in any case in which the words "United States," or "American," the letters "U.S.A.," any variation of such words or letters, or the name of any foreign country or locality other than the country or locality in which the article was manufactured or produced, appear on an imported article or its container, there shall appear legibly and permanently, in close proximity to such words, letters or name, and in at least a comparable size, the name of the country of origin preceded by "Made in," "Product of," or other words or similar meaning. Therefore because the name of the U.S. distributor, probably followed by its U.S. address, will appear on the container, there shall appear legibly and permanently, in close proximity to such words and in at least a comparable size, the words "Packed in Canada," or similar words.

Holding.—The country of origin of frozen orange juice concentrate reconstituted in Canada from either Brazilian or Florida concentrate or a blend of the two is Canada. If the orange juice will be in a container that bears the name and address of a U.S. distributor, there shall appear legibly and permanently, in close proximity to the name and address of the distributor, and in at least comparable size, the words "Packed in Canada," or similar words.

(C.S.D. 80–89)

Prohibited and Restricted Importations: Trademark Infringement; Conflict Between Marks Registered With U.S. Patent and Trademark Office

Date: August 17, 1979
File: TMK–3–R:E:E
710835 MC

This ruling concerns the applicability of the prohibition set forth in section 526 of the Tariff Act of 1930, as amended (19 U.S.C. 1526), against the importation of merchandise bearing resemblance to an American trademark.

Issue.—Whether the importation of shirts bearing the registered service mark "Sutton Place" infringes upon the registered and recorded trademarks "Sutton," "Mr. Sutton," and "Sutton of California" in violation of section 526 of the Tariff Act of 1930, as amended (19 U.S.C. 1526).

Facts.—Our New York office was contacted by Sutton Shirt Corp. concerning possible infringement of their trademark by the importation of shirts using the words "Sutton Place." Sutton Shirt Corp. owns the registered trademarks "Sutton," "Sutton of California," and "Mr. Sutton," all recorded with Customs.

The submitted allegedly infringing shirt sample employs the mark "Sutton Place" with the design of a horsedrawn carriage, a lamppost, and several buildings on both the label on the inside back of the shirt and the plastic packaging of the individual shirt. This mark is registered as a service mark on the Principal Register of the U.S. Patent and Trademark Office. No such mark has been recorded with Customs.

Law and analysis.—Section 45 of the act of July 5, 1946 (commonly referred to as the Lanham Act; 15 U.S.C. 1127) defines a service mark as "a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others." It has been generally held that goods themselves, as distinguished from services or goods provided incidental to services, cannot be the objects of a service mark. Thus the issue is raised as to whether the use of the service mark "Sutton Place" on shirts is a proper use of such a mark. Resolution of such an issue is not within the jurisdiction of the U.S. Customs Service.

Accordingly, it is the policy of the U.S. Customs Service to refrain from reaching the issue here and to proceed on the assumption that "Sutton Place" is a properly registered service mark.

Section 526 of the Tariff Act of 1930, as amended (119 U.S.C. 1526) and part 133, subpart A, of the Customs Regulations (19 CFR 133.1–133.7) provide for the recordation of trademarks with Customs for import protection. Section 133.21 of the Customs Regulations provides in part:

> Articles of foreign or domestic manufacture bearing a mark or name copying or simulating a recorded trademark or tradename shall be denied entry and are subject to forfeiture as prohibited importations.

The Trademarks "Sutton," "Mr. Sutton," and "Sutton of California" have all been recorded with Customs and require import protection. However, the issue is raised here as to whether use of a service mark can constitute infringement of a trademark where both marks have been registered with the U.S. Patent and Trademark Office. When there is an apparent conflict between two marks, both of which are registered with the U.S. Patent and Trademark Office, it is the policy of the Customs Service not to reach the issue of whether one mark infringes upon the other. Accordingly, the trademark owner will have to seek other means for redress of his complaint.

Holding.—The Customs Service will not reach issues concerning conflicts between marks registered with the U.S. Patent and Trademark Office. The allegedly infringing goods will not be detained.

(C.S.D. 80–90)

Classification: Baseball Caps

Date: August 20, 1979
File: CLA–2:R:CV:MA
062308 C

In a letter dated May 18, 1979, you stated a belief that extensive quantities of baseball caps are being misclassified at west coast ports.

It is your position that merely affixing a piece of decorative braid on the front of a baseball cap does not qualify that cap for classification under the provision for headwear, of manmade fibers, wholly or in part of braid in item 703.05, Tariff Schedules of the United States (TSUS), with duty at the rate of 18 perent ad valorem.

General headnote 9(f), TSUS, provides that " 'in part of' or 'containing' means that the article contains a significant quantity of the named material."

Our interpretation of the word significant as used in the aforecited headnote implies a degree of usefulness, being meaningful or necessary, or denoting employment for a reason. Thus, an item would contain a significant quantity of braid if that portion or quantity serves a useful purpose and/or increases the salability of the article.

Based on our telephone conversations with you, we realize that you are specifically concerned with the tariff treatment of baseball caps having noncontrasting braided stitching or noncontrasting tubular braid on the visor or front panels.

It is our position that noncontrasting braided stitching or noncontrasting tubular braid on or across the visor or front panels of baseball caps does not serve to ornament these caps inasmuch as it cannot be readily seen.

For this reason baseball caps of manmade fibers with noncontrasting braided stitching or noncontrasting tubular braid are not "in part of braid" and do not qualify for classification under item 703.05, TSUS.

Consequently, baseball caps of manmade fibers having noncontrasting braided stitching or noncontrasting tubular braid on or across the visor or front panels would be dutiable at the rate of 25 cents per pound plus 20 percent ad valorem under item 703.10, TSUS, if knit, or at the rate of 25 cents per pound plus 20 percent ad valorem under item 703.15, TSUS, if not knit.

This decision is being circulated to all Customs officers in order that the merchandise may be uniformly so classified at each port of which it may be entered.

(C.S.D. 80–91)

Generalized System of Preferences: Substantial Transformation; Electroplating

Date: August 20, 1979
File: R:CV:S JLV
055687

This ruling concerns certain electrolytes and anodes used in an electroplating process in a beneficiary developing country (BDC) and asserted to be substantially transformed constituent materials or direct costs of processing operations under the Generalized System of Preferences (GSP).

Issues.—(1) Are potassium gold cyanide, nickel chloride, and nickel anodes substantially transformed into new and different articles of commerce during an electroplating process so as to be materials produced in a BDC within the meaning of section 503(b)(2)(A)(i) of the Trade Act of 1974?

(2) Are hydrochloric acid, potassium citrate, and platinum-clad titanium anodes direct costs of processing operations in a BDC within the meaning of section 503(b)(2)(A)(ii) of the Trade Act of 1974 if such materials are consumed in an electroplating process without becoming part of the finished product?

Facts.—An article eligible for duty-free treatment under the GSP will be electroplated in a BDC with the use of nickel chloride, nickel anodes, potassium gold cyanide, hydrochloric acid, potassium citrate, and platinum-clad titanium anodes. All of these materials will be imported into the BDC. The processing to be performed in the BDC is described as follows: Cleaning of the article to be plated, rinsing twice with water, dipping in hydrochloric acid, rinsing twice more with water, electroplating with nickel, rinsing three times with water, electroplating with gold, and rinsing and drying.

The pure nickel deposit will provide a suitable base for the 22-karat gold plating. The source of the nickel plating will be the nickel chloride and nickel anodes, and the source of the gold plating will be the potassium gold cyanide. The hydrochloric acid, potassium citrate, and platinum-clad titanium anodes will be consumed in the processing and will not become part of the plated article.

Law and analysis.—Under section 503(b)(2)(A)(i), Trade Act of 1974, the cost or value of materials used in the production of a

GSP-eligible article is includable in the 35-percent value-added requirement for that article if the materials are produced in the BDC which manufactures the eligible article. To be such materials, section 10.177(a) of the Customs Regulations (19 CFR 10.177(a)) requires that materials which are not wholly the growth, product, or manufacture of the BDC must be substantially transformed in the BDC into new and different articles of commerce prior to being used in the manufacture of the eligible article.

The gold or nickel salts are chemical compounds which, when placed into an electrolytic solution, are dissociated into positive and negative ions. The positive gold or nickel ions are then plated out as free metal onto an article by passing an electric current through the solution. Similarly, the nickel anode is soluble in the electrolyte and is a source of ionic nickel which is then plated out as a free metal during the nickel-plating process.

The Customs Service is of the opinion that there are no constituent materials which come into existence as intermediate entities. Under 19 CFR 10.177(a)(2) it is presupposed that the constituent materials, which are new and different articles of commerce produced by a substantial transformation, have a separate existence apart from their imported condition and from the exported article. The imported materials in question are deposited directly by the electroplating process onto the eligible article. They do not become intermediate products having a separate existence apart from their condition as materials imported into the BDC or as integral parts of the eligible article.

To hold otherwise would invite clearly unacceptable analogous arguments such as the argument that foreign-made paint, for example, becomes a substantially transformed constituent material by virtue of the chemical changes associated with drying and curing after application to a product of a BDC.

As to the second issue, section 503(b)(2)(A)(ii) of the Trade Act of 1974 provides that direct costs of processing operations are includable in the 35 percent value-added requirement under the GSP. Section 10.178(a) of the Customs Regulations (19 CFR 10.178(a)) states that "direct costs of processing operations" means those costs either directly incurred in, or which can be reasonably allocated to, the growth, production, manufacture, or assembly of the specific merchandise under consideration.

The hydrochloric acid, potassium citrate, and platinum-clad titanium anodes are consumed in the electroplating process without becoming part of the eligible article. However, these materials are essential to the processing operation. Consequently, the costs of such materials or supplies, whether imported or domestic, are costs directly

incurred in the process by which the eligible article is electroplated in the BDC.

Holdings.—(1) The electroplating process by which the metals contained in nickel chloride, potassium gold cyanide, and nickel anodes are plated out as free metals on a GSP-eligible article does not result in substantially transformed constituent materials within the law and regulations of the GSP.

(2) The costs of the hydrochloric acid, potassium citrate, and platinum-clad titanium anodes which are consumed during the electroplating of an eligible article are direct costs of processing operations within the law and regulations of the GSP.

(C.S.D. 80–92)

Entries: Commercial Invoice Required for Merchandise Subject to Free or Specific Rate of Duty

Date: August 23, 1979
File: ENT–1–01–R:E:E
710430 M
710689 M
710712 M
710889 M

This ruling concerns the necessity of a foreign commercial invoice for merchandise subject to a free rate or specific rate of duty.

Issue.—Is a foreign commercial invoice required for merchandise subject to a free rate or specific rate of duty?

Facts.—An importer of crude rubber and an importer of crude oil have been importing and entering their merchandise at a Customs port of entry. In the past, the District Director has permitted them to file a pro forma invoice with their entries. Recently, the District Director has notified them that they are required to file a foreign commercial invoice with their entries. They object because in some instances the merchandise involved is sold in transit and the seller does not wish to provide them with the original invoice. In addition, they believe that such commercial invoice is unnecessary, and is not required by law or regulations.

Law and analysis.—19 U.S.C. 1484(b) basically authorizes Customs to prescribe by regulations the type of invoice needed for a particular transaction. Prior to T.D. 79–221, section 141.83(d) (3) and (4) of the Customs Regulations provided that a commercial invoice is not required for merchandise subject to a specific rate of duty, merchandise unconditionally free of duty, or in certain instances merchandise conditionally free of duty. However, if such invoice was in the posses-

sion of the importer or available to him, he was required to submit it. T.D. 79–221, published in the Federal Register on August 9, 1979, deleted subparagraphs (3) and (4) of section 141.83(d), and therefore eliminated the exception of merchandise subject to a specific rate of duty, or certain merchandise free of duty to the requirement of a commercial invoice.

Prior to T.D. 79–221, section 141.86(c) of the Customs Regulations provided that in the case of merchandise sold while in transit from the port of exportation to the port of entry, Customs should receive the original invoice which would reflect the transaction pursuant to which the merchandise actually began its journey to the United States, along with a statement showing the price paid for each item by the person who purchased the merchandise while the merchandise was in transit. T.D. 79–221 added a sentence to section 141.86(c) providing that if the original invoice cannot be obtained, a pro forma invoice showing the values and transactions reflected by the original invoice must be filed together with the resale invoice or statement.

Furthermore, sections 141.91 and 141.92 of the Customs Regulations set forth certain circumstances when the required invoice may be presented subsequent to entry or may be waived.

Thus, even prior to T.D. 79–221, a commercial invoice was required for merchandise subject to a specific rate of duty or free rate of duty when the importer had such invoice in his possession or such invoice was available to him. Both importers indicate in their correspondence that even when such commercial invoices were in their possession, they did not submit them to Customs, because Customs would accept the pro forma invoice.

As explained in the preamble of T.D. 79–221, Customs believes there is no inherent reason why merchandise subject to free or specific rates of duty should be exempt from the requirements to furnish a commercial invoice. Some of the most strategic and sensitive commodities, such as petroleum and sugar, fall into this category. A pro forma invoice filed in lieu of a commercial invoice may have data sufficient for duty purposes, but it seldom entirely satisfies statistical requirements. Customs believes that commercial invoices are available for most of this merchandise, but were not submitted simply because Customs would accept a pro forma invoice for such merchandise. Customs doubts that the rate of duty involved determines whether or not a commercial invoice is prepared. Therefore, for such merchandise, a commercial invoice is required.

In regard to merchandise sold in transit, Customs has recognized the problem incurred by the purchaser in receiving the original invoice. Customs has therefore issued in the past rulings which have permitted the seller of merchandise which was in transit to the United

States to submit to the District Director, at the appropriate port of entry involved, the foreign supplier's invoice so that the in-transit seller would not have to reveal this information to the importer. In such instances, the importer could enter for consumption the merchandise on the basis of the in-transit seller's invoice to him provided the in-transit seller furnished to Customs the foreign supplier's invoice prior to acceptance by Customs of the entry. As late as May 31, 1977, this information was disseminated to the field.

Furthermore, T.D. 79–221 recognizes the extreme difficulty when merchandise is sold in transit of obtaining the original invoice and has authorized the practice in regard to in-transit shipments of permitting a pro forma invoice to be filed in lieu of the original invoice, when such invoice cannot be obtained.

In regard to sections 141.91 and 141.92 of the Customs Regulations which permitted the late filing of the invoice or the waiving of the invoice, these two provisions should be applied on a case-by-case basis and should not be used as a blanket authority for permitting the late filing of or waiving of required invoices.

Both importers also request the type of information required to be shown on the commercial invoice for Customs purposes. The information necessary to be shown on a commercial invoice is set forth in section 141.86(a) of the Customs Regulations.

Holding.—For those entries filed prior to T.D. 79–221, published on August 9, 1979, a commercial invoice is required for merchandise subject to a specific rate of duty or certain merchandise subject to a free rate of duty, if such invoice was in the possession of the importer or otherwise available to him. For those entries filed on August 9, 1979, or later, a commercial invoice would be required for such merchandise, pursuant to T.D. 79–221.

(C.S.D. 80–93)

Duty Assessment: Dutiability of Merchandise Transferred From a Foreign Trade Zone to an Offshore Installation on Outer Continental Shelf

Date: August 24, 1979
File: FOR–1–R:CD:D
210871 K

Issue.—Whether foreign merchandise transferred from a foreign trade zone to an installation 18 miles off the U.S. shore is subject to duty.

Facts.—Manmade fiber rope, a product of the United Kingdom, is shipped on consignment to a foreign trade zone located at New

Orleans, La., without liability for duties. Part of all of the shipment may then be sent to an offshore installation.

Law and analysis.—Under general headnotes 1 and 2 and headnote 1, part 1, schedule 8, Tariff Schedules of the United States (TSUS), all articles imported into the Customs territory of the United States are subject to duty unless specifically exempted. General headnote 2 (TSUS) defines the term "Customs territory of the United States" to include the States, the District of Columbia, and Puerto Rico.

However, section 1333(a)(1), title 43, United States Code, also states in pertinent part the following:

> The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the Outer Continental Shelf and to all artificial islands, and to all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources, to the same extent as if the Outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State * * *.

Accordingly, foreign merchandise transferred from a foreign trade zone to an installation on the Outer Continental Shelf would be considered as merchandise imported into the Customs territory of the United States and subject to any applicable duties.

Holding.—Foreign merchandise transferred from a foreign trade zone to an installation (e.g., an offshore drilling platform) on the Outer Continental Shelf is subject to applicable duties, if any.

(C.S.D. 80–94)

In-Bond: Importer's Liability When In-Bond Merchandise Is Not Properly Exported

Date: August 29, 1979
File: VES–8–01–R:CD:C
104130 JL

To: Regional Commissioner of Customs, Houston, Tex.
From: Acting Director, Carriers, Drawback and Bonds Division.
Subject: Your memorandum: Outward bound vessel's requirement to furnish copies of in-bond documents ENF–4–0 GFD: July 11, 1979.

We have reviewed a copy of the above referenced memorandum which was directed to all District Directors in your region.

The memorandum discusses our ruling of July 18, 1979, concerning the (ship's name) which was assessed penalties for failure to furnish copies of in-bond documents covering cargo laden on it for exportation. The ruling held that there was no requirement in the Customs Regulations that such documents be furnished by an exporting carrier which merely had in-bond merchandise delivered to it. It was pointed out in the law and analysis section of the ruling that of the carriers involved, the initial bonded carrier was to be assessed penalties in the instance where the Customs form 7512 was not furnished. There was, of course, no discussion of other parties which might have penalties assessed when proof of exportation was not furnished.

In the last paragraph of the memorandum, it is stated:

> Although we believe that a strong case can be made to assess liquidated damages against the importer who filed the transportation and exportation entry in these instances, claims for liquidated damages will be assessed against the initial bonded carrier until such time as:
>
> (1) A regulatory amendment, with appropriate bond liabilities, can be made to require the outward bound carrier to provide the in-bond document, or
>
> (2) A clarification of the ruling is received in this regard as to the liability of the importer, as opposed to the bonded carrier.

As to (1), the letter covering our ruling of June 18, stated that "for reasons which are obvious in the enclosed ruling, we do not consider amendments to the Customs Regulations to be necessary." We have not been persuaded otherwise in the interim.

Regarding (2), parties other than carriers were not at issue in the (name) case. An in-bond shipment involves a bond (or carnet) given by an importer. Failure to properly export the bonded merchandise gives rise to a breach of the bond with its attendant right on the part of Customs to demand liquidated damages. On this subject, we are enclosing a copy of a letter sent to Representative (name) which involved a complaint filed by a customhouse broker who objected to importers being assessed liquidated damages when carriers failed to effect proper exportation. Although the subject matter of the complaint was TIB entries, the response applies as well to all in-bond transactions.

(C.S.D. 80–95)

Carrier Control: Exemption From Special Tonnage Tax and Light Money: Netherlands Antilles

Date: August 2, 1979
File: VES–11–11–RRUCDC
104163

(Telegram)

To All Regional Commissioners:

The State Department has advised the Department of the Treasury that vessels of the Netherlands Antilles should be exempted from the payment of special tonnage tax and light money. Action to add the Netherlands Antilles to the list of countries in section 4.22 CR (Customs Regulations) has been initiated. Pending the amendment to the regulations and on the basis that the exemption will be retroactive no special tonnage tax and light money should be assessed against Netherlands Antilles vessels arriving in any Customs region.

(C.S.D. 80–96)

Carrier Control: Use of Foreign-Flag Tugs and Submersible Barges To Tow or Transport Foreign-Flag Mobile Drilling Rig Between Coastwise Points

Date: August 29, 1979
File: VES–3–07–R:CD:C
VES–3–15
VES–10–03
104027 MKT

This ruling concerns the permissibility of the use of a foreign-flag tug to tow a foreign-flag mobile drilling platform between coastwise points or between a coastwise and a foreign point and the use of a foreign-flag submersible barge to support the mobile drilling platform during a portion of or the entire tow.

Issues.—(1) Whether title 46, United States Code, section 316(a), prohibits a foreign-flag tug from towing a foreign-flag mobile drilling platform between coastwise points.

(2) Whether section 316(a) of title 46, prohibits a foreign-flag tug from towing a foreign-flag submersible barge laden with a foreign-flag mobile drilling platform between coastwise points.

(3) Whether section 316(a) prohibits a foreign-flag tug from towing a foreign-flag submersible barge laden with a foreign-flag mobile drilling platform from a coastwise point to a foreign point and from

continuing to tow the mobile drilling platform without the barge to another coastwise point.

(4) Whether title 46, United States Code, section 883, prohibits the use of a foreign-flag submersible barge to support a foreign-flag mobile drilling platform while the barge is towed between coastwise points.

(5) Whether section 883 of title 46, prohibits the use of a foreign-flag submersible barge to support a foreign-flag mobile drilling platform while the barge is towed between a coastwise and a foreign point when the mobile drilling platform will continue to be towed to a coastwise point.

Facts.—There are three foreign-flag vessels involved in this case, a mobile drilling platform, a submersible barge, and a tug. The foreign-flag mobile drilling platform is to be moved from one coastwise port to another. To protect it from weather damage a foreign-flag submersible barge will be used to transport the platform. A foreign-flag tug will tow the barge. To accomplish this, the mobile drilling platform will be maneuvered over the aft portion of the partially submerged barge. Then the barge will be deballasted until it bears the weight of the mobile drilling platform. The two vessels will be secured together and towed to their destination as described below. The mobile drilling platform will not carry passengers or merchandise.

Three possible methods are contemplated to move the platform from one coastwise point to another. In the first method, the tug will tow the platform between those points without using a barge. In the second method, the tug will tow the barge laden with the platform between coastwise points. In the third method, the tug will tow the barge laden with the platform from a coastwise point to a foreign point (e.g., off Canada or Mexico). Then the tug will continue to tow the platform to a coastwise point without the use of the barge.

Law and analysis.—(1), (2), and (3) Section 316(a) of title 46 prohibits a foreign-flag vessel from towing a vessel other than a vessel of foreign registry or a vessel in distress between coastwise points. Title 19, United States Code, section 1401(a) defines a "vessel" to include" * * * every description of water craft or other contrivance used, or capable of being used, as a means of transportation in water * * *." The Customs Service has previously ruled that this mobile drilling platform is a vessel within the meaning of section 1401(a) of title 19 for purposes of duty assessment. We also consider this mobile drilling platform to be a vessel within the meaning of section 316(a) when used as a means of transportation in water. Therefore, since the mobile drilling platform and the submersible barge are both foreign-flag vessels, section 316(a) will not prohibit a

foreign-flag tug from towing either or both vessels between coastwise points or between a coastwise and a foreign point.

(4) and (5) Section 883 of title 46, prohibits a foreign-flag vessel from transporting merchandise between coastwise points, either directly or via a foreign port, or from transporting merchandise for any part of its transportation between those points. The mobile drilling platform will not carry passengers or merchandise and you do not indicate that the submersible barge will carry anything other than the mobile drilling platform. We therefore address the issue of whether the mobile drilling platform is considered merchandise within the meaning of the coastwise laws when it is transported by the submersible barge.

The determination that an object is a vessel within the meaning of section 1401(a) of title 19 or for the purposes of section 316(a), does not prevent it from being considered merchandise within the meaning of section 883 of title 46. The Customs Service has previously considered vessels carried as cargo on another vessel to be merchandise within the meaning of that statute. In this case, because the barge will transport, bear the weight of and be secured to the drilling platform, we consider the barge to be transporting merchandise in violation of section 883 when it carries the platform from one coastwise point to another.

Section 883 does not prohibit the submersible berge from transporting the mobile drilling platform from a coastwise point to a foreign point (e.g., off Canada or Mexico) after which the tug will tow the platform without the barge to another coastwise point. This is because the platform will not be unladen as merchandise at a coastwise point but at a foreign point, and subsequently the platform will be towed as a vessel to the United States. The character of the platform will change from merchandise to a vessel at the foreign point.

Holding.—(1), (2), and (3) Section 316(a) of title 46, does not prohibit a foreign-flag tug from towing a foreign-flag mobile drilling platform or a foreign-flag submersible barge, whether laden with or without the platform, between points within the coastwise laws or between a coastwise and a foreign point.

(4) Section 883 prohibits the use of a foreign-flag barge from transporting a foreign-flag drilling platform between points within the coastwise laws.

(5) Section 883 does not prohibit the use of a foreign-flag submersible barge to support a foreign-flag mobile drilling platform while the barge is towed between a coastwise point and a foreign point when the mobile drilling platform will continue to be towed to a coastwise point.

(C.S.D. 80-97)

Prohibited and Restricted Importations: Trademark Infringement: Plastic Bags With Mark Substantially Likely To Cause Confusion

Date: August 31, 1979
File: TMK-3-R:E:E
709577 SO

This ruling concerns the applicability of the prohibition set forth in section 42 of the act of July 5, 1946 (commonly referred to as the Lanham Act, 60 Stat. 440; 15 U.S.C. 1124), against the importation into the United States of goods bearing infringing marks or names.

Issue.—Would the importation of PVC bags bearing a design infringe upon the rights of the owner of the registered Design trademark for trunks, valises, traveling bags, satchels, hat boxes, and shoe boxes used for luggage, handbags, and pocketbooks.

Facts.—PVC bags bearing a design which may be described as the letters "P" and "C" superimposed one on the other and surrounded by a fleurs-de-lis pattern, manufactured in Italy, have been imported. Our New York regional office considered these bags to be an infringement upon the distinctive trademark, the letters "L" and "V" superimposed one on the other and surrounded by a fleurs-de-lis pattern, which was initially registered with the U.S. Patent Office on September 20, 1932, by the trademark owner, Vuitton et Fils S.A., a French corporation. This registration is currently valid and fully enforceable and has been recorded with Customs for import protection since June 20, 1978. The trademark registration is for trunks, valises, traveling bags, satchels, hat boxes and shoe boxes used for luggage, handbags, and pocketbooks.

A notice of redelivery for a shipment of imported PVC bags was issued by our New York office. The merchandise was not redelivered as directed nor did the importer elect one of the other alternatives offered. Therefore, a claim for liquidated damages was initiated on October 4, 1978. The attorney for the importer submitted a letter denying that his client's merchandise copies the registered and recorded design trademark. The attorney for the trademark owner submitted two letters informing our New York Office that 28 civil suits have been filed against persons or corporations in the U.S. district court in order to prevent the infringement or unauthorized use of the design trademark. A sample PVC shopping bag from the shipment in question bearing the alleged infringing mark and a swatch of material bearing the genuine trademark were submitted to our office for comparison purposes.

Law and analysis.—Section 42 of the act of July 5, 1946 (commonly referred to as the Lanham Act, 60 Stat. 440, 15 U.S.C. 1124), prohibits the importation into the United States of merchandise which shall copy or simulate a registered trademark of any foreign manufacturer or trader who is entitled under the provisions of a treaty, convention, declaration, or agreement between the United States and any foreign country to advantages afforded by law to citizens of the United States in respect to trademarks, provided a copy of such trademark registration is filed with the Secretary of the Treasury and recorded in the manner provided by regulations (19 CFR 133.1–133.7). Section 526(b) of the Tariff Act of 1930, as amended, (19 U.S.C. 1526(b)) provides that any such merchandise bearing a counterfeit mark, within the meaning of section 45 of the Lanham Act (15 U.S.C. 1127), imported in violation of section 42 of the Lanham Act (15 U.S.C. 1124), shall be seized, and, in the absence of written consent of the trademark owner, forfeited for violations of the Customs laws.

The term "counterfeit" is defined in the law (15 U.S.C. 1127) as a spurious mark which is identical with, or substantially indistinguishable from, a registered mark. Since the imported PVC bags bear a design which is not identical with or substantially indistinguishable from the design trademark, the mark is not considered to be counterfeit within the definition cited above, and future shipments would not be subject to the procedures set forth in 19 U.S.C. 1526(b) and section 133.23a of the Customs Regulations (19 CFR 133.23a) for notice to the trademark owner, seizure and forfeiture to the Government, and disposition of forfeited merchandise in accordance with 19 CFR 133.52(a) in the absence of written consent of the trademark owner to an alternative disposition.

Infringement of federally registered marks is governed by the test of whether defendant's use is likely to cause confusion, or to cause mistake, or to deceive. In considering the question of whether or not the marks are confusingly similar, we note that both marks are comprised of two capital letters superimposed one upon the other, surrounded by a fleurs-de-lis pattern. The appearance of the marks are strikingly similar. The only differences noted upon careful scrutiny are that the letters are different and that there are minor differences in the shape of some of the figures that make up the fleurs-de-lis pattern. Under the normal test applicable to unsophisticated buyers of a product at retail, we are of the opinion that there would be a substantial likelihood of confusion.

The design trademark has been in continuous use by Vuitton et Fils S.A. or its predecessors since 1908. Consequently, the Vuitton trademark has become highly distinctive and is strongly associated with the Vuitton business and its reputation for quality products.

It appears to us that the manufacturers and importers of the PVC bags bearing the alleged infringing mark are latecomers in the industry. In a situation such as this, any doubts regarding the likelihood of confusion should be resolved in favor of the prior user of the mark. The theory behind this is that the newcomer's field of selection of a mark is not so limited as to require the adoption of a mark likely to cause confusion. Accordingly, entry of the imported PVC bags bearing the design described above would be prohibited entry into the United States as infringing the registered design trademark.

Holding.—Importations of PVC bags bearing the infringing design (the letters "P" and "C" superimposed one on the other and surrounded by a fleurs-de-lis pattern) should be detained pursuant to section 133.22 of the Customs Regulations (19 CFR 133.22). Articles detained pursuant to 19 CFR 133.22 may be released to the importer if any of the circumstances allowing exemption from trademark restrictions set forth in 19 CFR 133.21(c) are established. Since the importer has not chosen to exercise any of these options during the 30-day period of detention and has not redelivered the merchandise to Customs custody, the claim for liquidated damages under the terms of the entry bond was proper pursuant to 19 CFR 133.46 and 19 CFR 141.113(g). You may furnish a copy of this ruling to all concerned parties.

(C.S.D. 80–98)

Exemptions: Whether Stereo Components and Portable Televisions Are Household Effects Under Item 810.10, TSUS

Date: August 31, 1979
File: BAG–5–02–R:E:E
710052 HS

This ruling concerns whether stereo components and portable televisions are household furnishings or effects within the meaning of item 810.10, Tariff Schedules of the United States.

Issue.—Whether stereo components and portable televisions are household furnishings or effects entitled to free entry under item 810.10, Tariff Schedules of the United States (TSUS).

Facts.—A broker desires clarification on whether portable television sets and stereo components which are used abroad not less than 1 year are entitled to free entry as household furnishings or effects.

Law and analysis.—The Secretary of the Treasury is authorized under 19 U.S.C. 1498(a)(4) to prescribe rules and regulations for the

declaration and entry of household effects used abroad and personal effects, not imported in pursuance of a purchase or agreement for purchase and not intended for sale.

Section 148.52(a), Customs Regulations, prescribes the regulations for furniture and other usual household furnishings and effects actually used abroad for not less than 1 year by a resident or nonresident, and not intended for any other person or for sale, entry free of duty and tax under item 810.10 and schedule 8, part 2, headnote 1, TSUS.

Item 810.10, TSUS, provides that articles such as books, libraries, usual and reasonable furniture, and similar household effects imported by or for the account of any person arriving in the United States from a foreign country may be admitted free of duty if they were actually used abroad by the person or by the person and his family for not less than 1 year, and are not intended for any other person or for sale.

In the past, Customs has ruled that stereo components and portable televisions are not such household furnishings or effects. They have been considered dutiable as electronic equipment under items 684.70–685.59, TSUS.

However, after a review of this ruling we have concluded that a change in the buying habits of the American consumer requires the ruling to be amended. While in the past many Americans may not have owned stereo systems and portable television sets, these appliances are usual household effects found in most American homes today.

Further, we do not believe it is fair to differentiate between a console stereo system or television set and a component stereo system or portable television in granting personal exemptions. In the past, console systems were permitted entry free as furniture while stereo component systems and portable television sets were treated as electronic equipment not permitted free entry. We are now of the opinion that stereo component systems and portable television sets are household effects within the scope of item 810.10, TSUS.

Holding.—Stereo components and portable televisions are considered to be household effects entitled to free entry under item 810.10, Tariff Schedules of the United States upon compliance with section 148.52(a), Customs Regulations, if actually used abroad for not less than 1 year.

(C.S.D. 80–99)

Drawback: Use of Perforated Signatures Under the Uncertified Notice of Exportation Procedure; Section 22.7(c), Customs Regulations

Date: September 7, 1979
File: DRA–1–09–R:CD:D B 210906

Issue.—Whether a perforated signature on a bill of lading is acceptable for certification of export under the uncertified notice of export procedure set out in section 22.7(c), Customs Regulations.

Facts.—Customs field officers have asked for a ruling on the above issue before they accept the perforated signatures.

Law and analysis.—The perforated signatures are considered facsimile signatures. Under applicable statutory law, in the absence of a statute providing otherwise, a signature of almost any type is sufficient for certification or authentication if the person or entity affixing that signature intends to be bound by it. Customs Headquarters so held in a ruling of March 5, 1979 (DRA–1–09–R:CD:D B 210102), disseminated as Legal Determination 79–0153.

The pertinent part of section 22.7(c), Customs Regulations, Uncertified notice of exportation, provides:

> * * * An uncertified notice of exportation shall be supported by documentary evidence of exportation, such as the bill of lading, air waybill, freight waybill, Canadian Customs manifest, cargo manifest, or certified copies thereof, issued by the exporting carrier * * *.

Section 22.7(b)(3), Customs Regulations, is silent on the type of certification required for certified notices of exportation by the District Director or his designee. It would be inequitable to require a higher degree of certification, i.e. original signatures, on drawback papers prepared by claimants, so long as it is understood those claimants intend to be bound by facsimile signatures, if these are used.

Holding.—Perforated and other facsimile signatures on bills of lading and other documents set out in section 22.7(c), Customs Regulations, may be accepted by Customs so long as the parties using those signatures agree to be bound by them.

(C.S.D. 80-100)

Valuation: Cost of Production: Whether Leasehold Costs Allocable to Unused Floor Space Form Part of the Usual General Expenses of Production

Date: September 27, 1979
File: R:CV:V
061400 GE

To: District Director of Customs, El Paso, Tex.
From: Director, Classification and Value Division, Headquarters, Washington, D.C.
Subject: Internal Advice Request No. 91/79.

This is in reply to your request for internal advice concerning the proper appraisement of certain imported automotive wiring harnesses, appraised under cost of production, 19 U.S.C. 1402(f).

Issue.—Whether the cost of rent allocable to presently unutilized floor space at the importer's foreign assembly facility is a usual general expense, 19 U.S.C. 1402(f)(2), which forms part of the dutiable value of the subject harnesses.

Facts.—The importer's assembly facility in Mexico leases space for its operations, including floor space which is, according to the importer, totally unutilized, abuts floor space now used for assembly of wiring harnesses, and is not physically segregated from the plant. Since the facility is, and will be engaged only in the production of wiring harnesses, the presently unutilized space is intended solely for future expansion of the facility's existing operations. In September 1978, the amount of unutilized floor space was 47 percent of the total leased space. This percentage has been reduced by 3 to 6 percent each successive month, so that by February 1979, only 20 percent of the floor space remained unutilized. In submitting its first actual cost submission in April, the assembler discounted the proportionate amount of unused floor space cost for each month from the monthly lease cost. The total discount subtracted from its cost submission was $67,278.

In a memorandum dated June 6, 1979, the Chief, Duty Assessment Branch, New York Seaport, expressed the opinion that the cost for leasehold expenses allocable to unused floor space does not, for Customs purposes, relate to the assembly of the wiring harnesses. On the other hand, it is your opinion that the costs incurred in leasing the unutilized space are usual general expenses under 19 U.S.C. 1402(f)(2) and thus form part of the dutiable value of the subject merchandise.

Law and analysis.—It is the opinion of Headquarters that the leasehold costs allocable to the unutilized floor space do not constitute part

of the usual general expenses of the wiring harness assembly operation. It is not disputed that the proper basis of valuation is cost of production under section 1402(f), title 19 of the United States Code.

In ORR ruling 73–0092, dated April 6, 1973, this office was of the position that costs associated with unutilized floor space would be dutiable unless the amount of space was unusually or disproportionately large as compared to the total available space. On the other hand, these costs would not be dutiable if the unutilized space was reserved for a future operation different from the existing operation. In such a case, the costs would not be part of the usual general expenses of such merchandise.

In a later ruling, ORR ruling 77–0124, dated March 7, 1977, we modified our earlier position. We ruled that costs associated with unutilized floor space, regardless of intended future use, are nondutiable. The reason is that it is too difficult for an importer to establish that the unused floor space is reserved for a different assembly operation, rather than an expansion of the same assembly operation. Only after the floor space is actually used for the same operation will its costs be dutiable.

Your office is of the opinion that, because in this case it would not be difficult to show that the floor space will be used for wiring harness assembly operations, future intended use should be a consideration. However, since the difficulties recognized in ORR ruling 77–0124 generally still exist, and since to distinguish the present situation as a special case would substantially burden future administrative efforts, foster inconsistent rulings, and increase uncertainties for importers, we stand by our prior ruling.

It follows from our decision in 1977 that regardless of the fact that the percentage of unutilized floor space ranged from 47 percent to only 20 percent of the total space, the costs associated with the floor space are not attributable to the cost of producing the wiring harnesses. In essence, that decision requires that unutilized space is to be treated as nondutiable until the space is actually used for the expansion of the same operations.

Your office is also of the opinion that because there is no competing cost object to which to assign leasehold expenses actually incurred, these fixed costs must be assigned to the wiring harness assembly operations. Our prior rulings, however, make clear that there are circumstances where costs will be incurred, will not be assignable to competing cost objects, and are nonetheless not part of dutiable value. One example is where costs are incurred due to temporary circumstances of an extraordinary nature, such as floods, fires, and strikes. Such costs are not included in a cost of production appraisement.

We distinguish the present situation from one where floor space is temporarily idle due to circumstances which are temporary and normally incident to any ongoing business, such as economic downturns. The unused floor space of the assembly facility in the instant case has at no time been associated with the assembly of wiring harnesses. Once the floor area is associated, however, even if temporarily unutilized, its leasehold expenses constitute part of the cost of production.

Holding.—The leasehold costs allocable to the unused floor space are not part of the usual general expenses of producing the automotive wiring harnesses under section 1402(f), title 19 of the United States Code.

Decisions of the United States Customs Court

Customs Decision

(C.D. 4860)

LEE ENTERPRISES, INC., PLAINTIFF, *v.* UNITED STATES, DEFENDANT

Court No. 77-2-00176

Unfinished Printing Plates

"MATERIAL" VS. "UNFINISHED" ARTICLE—DEDICATION TO USE TEST

"The general rule is that a thing may be classed as an unfinished article if in its imported condition it has been so far advanced beyond the stage of materials as to be dedicated to and commercially fit for use as that article and is incapable of being made into more than one article or class or articles." *Avins Industrial Products Co.* v. *United States*, 72 Cust. Ct. 43, C.D. 4503, 376 F. Supp. 879, *reh. denied*, 72 Cust. Ct. 147, C.D. 4522 (1974), *aff'd*, 62 CCPA 83, C.A.D. 1150, 515 F.2d 782 (1975).

SAME—IDENTITY OF INDIVIDUAL ARTICLE FIXED WITH CERTAINTY

Imported merchandise will be regarded as a "material" rather than as an "unfinished" article where the identity of the individual article is not fixed with certainty. *Bendix Mouldings, Inc.* v. *United States*, 73 Cust. Ct. 204, C.D. 4576, 388 F. Supp. 1193 (1974); *Sandvik Steel, Inc.* v. *United States*, 66 Cust. Ct. 12, C.D. 4161, 321 F. Supp. 1031 (1971).

SAME—PRINTING PLATES—"UNFINISHED"

The record in this case establishes that the "NAPP" photopolymer plates were dedicated to use as printing plates and that the identity of the individual articles was "fixed with certainty."

After trimming, punching, and bending, the imported plates were usable for no more than a single letter press printing plate and were not bulk material from which an unknown number of printing plates were made. "(T)he involved articles have been so far advanced that each has attained an individuality which identifies it in its unfinished state as the article it will be when finished." *Geo. S. Bush & Co., Inc.* v. *United States*, 34 CCPA 17, 20, C.A.D. 338 (1946). Hence, the NAPP plates are unfinished articles rather than materials.

UNFINISHED PARTS OF PRINTING MACHINERY

"NAPP" photopolymer plates designed and dedicated for use in rotary letter presses for printing newspapers, which after importation were required to be trimmed to size, punched and crimped for mounting them on saddles, were not precluded from the status of unfinished parts of printing machinery by virtue of the fact that the plates were trimmed to various sizes depending upon the size of the newspaper to be printed. Therefore, the merchandise is properly dutiable as parts of printing machinery under item 668.50, TSUS, as claimed by plaintiff, rather than as articles of aluminum under item 657.40, TSUS, as classified by Customs.

[Judgment for plaintiff.]

(Decided June 23, 1980)

Glad, Tuttle & White, Esqs. (*Robert Glenn White*, Esq., of counsel) for the plaintiff.

Alice Daniel, Assistant Attorney General, *Joseph I. Liebman*, Attorney in Charge, Field Office for Customs Litigation, *Susan Handler-Menahem*, trial attorney, for the defendant.

NEWMAN, JUDGE:

INTRODUCTION

Plaintiff contests the classification by Customs at Los Angeles of certain NAPP photopolymer plates imported from Japan during the period of 1972–74. The merchandise was classified by the District Director under the provisions in item 657.40, TSUS, as modified by T.D. 68–9, for articles of aluminum, not coated or plated with precious metal, and assessed duty at the rate of 9.5 per centum ad valorem.

Plaintiff claims that the imports are unfinished printing plates, and are properly dutiable under the provision in item 668.50, TSUS, for "Other parts of printing machinery" at the rate of 6 per centum ad valorem, the rate applicable to printing presses under item 668.20, TSUS, as modified by T.D. 68–9.

I have concluded that plaintiff's claim should be sustained.

STATUTES INVOLVED

Tariff Schedules of the United States, 19 U.S.C. § 1202:

Classified under:		
Schedule 6, part 3, subpart G:		
657.40	Articles of aluminum, not coated or plated with precious metal	9.5% ad val.
Claimed under:		
Schedule 6, part 4, subpart D:		
	Printing machinery:	
* * * * * * *		
668.20	Other, including printing presses, offset duplicating machines, and stencil copy machines	6% ad val.
* * * * * * *		
668.38	Steel plates, stereotype plates, electrotype plates, half-tone plates, * * * and plates of other materials, engraved or otherwise prepared for printing	* * *
668.50	Other parts of printing machinery	The rate for the articles of which they are parts.

General headnotes and rules of interpretation:

10. *General interpretative rules.*—For the purposes of these schedules—

* * * * * * *

(h) unless the context requires otherwise, a tariff description for an article covers such article, whether assembled or not assembled, and whether finished or not finished;

(i)–(j) a provision for "parts" of an article covers a product solely or chiefly used as a part of such article, but does not prevail over a specific provision for such part.

THE RECORD

Plaintiff presented the testimony of three witnesses: Gary L. Benshoof, director of product programs for NAPP Systems (U.S.A.), Inc. (an affiliate of Lee Enterprises, Inc.), and a former employee of plaintiff; Tom Williams, publisher of the Montana Standard, a Lee Enterprises newspaper; and James Michael Zehner, commodity team

leader, U.S. Customs Service. Defendant called no witnesses. Both parties submitted various exhibits, and the official papers were received in evidence, without marking.

The pertinent facts are:

The merchandise comprises rectangular aluminum plates measuring 16 by 24 inches coated with a polyvinyl alcohol resin (photopolymer coating) which is sensitive to ultraviolet light (R. 14–15, 20). The NAPP plates are used for printing newspapers on rotary letter presses by various publishers in the United States, and have no use other than for printing (R. 18, 20–21, 72, 76). Letter press printing is a process in which an image is raised in relief and printing is performed from the raised top surface (R. 8).

In their imported condition, the photopolymer plates are not usable for printing, but require preparation. The plates are prepared for use in printing by first exposing a newspaper page negative onto their light-sensitive surface with an ultraviolet light. This exposure to light causes chemical changes (polymerization) that harden the photopolymer coating in those areas where the light is transmitted through the negative. After the exposure process, water is sprayed onto the plates washing away the photopolymer coating in the areas that were not exposed to the ultraviolet light, leaving a relief image on the plates (R. 21, 23–24, 26).

After the relief image has been placed on the plates, they must be prepared for mounting on the letterpresses. In short, such preparation involves trimming to size, punching holes, and bending the ends of the plates (R. 28, 48).

The purpose of trimming the plates is to reduce their size to the size of the page of printed image used by the particular newspaper. Newspapers are not printed in any standard or uniform sizes, and consequently the precise amount of trimming required for a particular plate depends upon the specific size of the newspaper to be printed with that plate (R. 61, 69–70). There are no lines of demarcation on the plates for trimming (R. 47).

After trimming, holes are punched in the ends of the plates, which holes serve the purpose of holding the plates to the saddle of the press cylinder by pins (R. 32, 40, 58). The saddle is a semicyclindrial device attached to the cylinder of the rotary letter press that acts as an adapter for photopolymer plates (R. 34–36).

After hole-punching, the ends of the plates are crimped or bent to a 90-degree angle (R. 28, 47).

It takes from 7 to 10 minutes to expose the imported plates and prepare them for mounting to the saddle of the press (R. 41, 75–76).

THE ISSUE

The sole question presented is whether the trimming, hole-punching and crimping operations to which the imported plates were subjected in order to mount them on a letterpress constituted the processing of an unfinished printing plate into a finished plate, as contended by plaintiff; or whether such processing constituted the substantial manufacture of a raw material into a finished article, as maintained by defendant.[1]

OPINION

Interpretative rule 10(h) of the Tariff Schedules of the United States provides in pertinent part that "unless the context requires otherwise, a tariff description for an article covers such article, * * * whether finished or not finished". Hence, by virtue of rule 10(h), the provision for parts of printing machinery in item 668.50, TSUS, covers unfinished parts of such machinery. While plaintiff claims that the imports are unfinished printing plates (and thus, unfinished parts of printing machinery), defendant insists that the merchandise is in material form (brief, at 6).

In *Avins Industrial Products Co.* v. *United States*, 72 Cust. Ct. 43, C.D. 4503, 376 F. Supp. 879, *reh. denied*, 72 Cust. Ct. 147, C.D. 4522 (1974), *aff'd*, 62 CCPA 83, C.A.D. 1150, 515 F.2d 782 (1975), Judge Rao articulated the dedication to use test that is applicable in determining whether particular merchandise is a material or an unfinished article or part (72 Cust. Ct. at 49):

> The general rule is that a thing may be classed an as unfinished article if in its imported condition it has been so far advanced beyond the stage of materials as to be dedicated to and commerically fit for use as that article and is incapable of being made into more than one article or class of articles. *United States* v. *Schenkers, Inc.*, *supra*; *American Import Co.* v. *United States*, 26 CCPA 72, 74, T.D. 49612 (1938); *F. W. Myers & Co., Inc.* v. *United States*, 57 CCPA 87, 90, C.A.D. 982, 425 F. 2d 781 (1970); *Finn Bros. Inc.* v. *United States*, 59 CCPA 72, 75–76, C.A.D. 1042, 454 F. 2d 1404 (1972).

And continuing, the Court observed (72 Cust. Ct. at 50):

> Whether particular merchandise is a material or an unfinished article or part is a question which has been before the courts on many occasions, with differing results depending upon the facts and the statutory language in each case. *United States* (*American Sponge & Chamois Co., Inc., Party in Interest*) v. *Nylonge Corporation*, 48 CCPA 55, 61, C.A.D. 764 (1960). "The exact point

[1] Defendant does not urge that the exposure and washing process used to place a relief image on the photopolymer plates constituted the imports materials rather than unfinished plates. Further, defendant does not dispute that if the imports are unfinished printing plates, they are classifiable as parts of printing machinery under item 668.50, TSUS.

> in the processing of raw material at which it becomes a partly finished article or manufacture is a matter which must be determined on the basis of the circumstances of the particular case involved." *J. B. Henriques, Inc.* v. *United States*, 46 CCPA 54, 56, C.A.D. 695 (1958).

It is also well settled that imported merchandise will be regarded as a material rather than as an unfinished article or part where the identity of the individual article is not fixed with certainty. See *Bendix Mouldings, Inc.* v. *United States*, 73 Cust. Ct. 204, C.D. 4576, 388 F. Supp. 1193 (1974), *Sandvik Steel, Inc.* v. *United States*, 66 Cust. Ct. 12, C.D. 4161, 321 F. Supp. 1031 (1971), and the cases cited and discussed therein. As stated by Judge Watson in *Bendix Mouldings* (73 Cust. Ct. at 205):

> The general problem of when a material becomes an article is one which has long been the subject of judicial consideration. I believe certain useful guidelines emerge from a study of past case law. With respect to importations which are in a form dedicated to a certain use but from which the claimed individual articles have not yet fully emerged, to my mind the underlying question is whether the identity of an actual individual article can somehow be discerned.

Here, the record abundantly establishes that the NAPP plates in issue were dedicated to use as printing plates, and that the identity of the individual article was fixed with certainty. Thus, each individual imported NAPP plate was dedicated to use for no more than a single letter press printing plate and was not bulk material from which an unknown number of printing plates were made. This significant fact distinguishes the merchandise in the present case from that in the following line of cases holding the merchandise therein to be a material rather than unfinished articles or parts. *The Harding Co. et al.* v. *United States*, 23 CCPA 250, T.D. 48109 (1936) (brake linings in rolls); *American Import Co.* v. *United States*, 26 CCPA 72, T.D. 49612 (1938) (silk fishing-leader gut in coils); *F. H. Paul & Stein Bros., Inc.* v. *United States*, 44 Cust. Ct. 130, C.D. 2166 (1960) (reels of aluminum foil); *Sandvik Steel, Inc., supra* (shoe die knife steel in coils and Dieflex cutting rules in lengths); *Naftone, Inc.* v. *United States*, 67 Cust. Ct. 341, C.D. 4294 (1971) (rolls of plastic film); *Bendix Mouldings, Inc., supra* (wood moldings in 9-foot lengths dedicated for use in the manufacture of picture or mirror frames).

As may be noted, the merchandise in the above-cited cases was imported in rolls, coils, reels, or lengths rather than individual pieces which required trimming, as here. Notwithstanding the trimming required, the imported articles were still identifiable as individual printing plates in an unfinished condition. They were never cut in half (R. 60) or divided into several printing plates. In this respect,

the present merchandise is somewhat analogous to the so-called natural silk gut or "tegusu" in *Geo. S. Bush & Co., Inc.* v. *United States*, 34 CCPA 17, C.A.D. 338 (1946).

In *Bush*, the natural silk gut was imported in individual pieces of from 5 to 7 feet in length. Before these pieces could be used as leaders for fishing lines, a waste portion thereof (clearly distinguishable from the usable portion of the articles) was required to be cut off. The articles from which the waste portions had been removed and which had been soaked in water and loops tied in each of the ends for the purpose of attaching a fishing line to one end and a hook to the other, were used without cutting to length as finished leaders. In finding that the individual pieces of natural silk gut were unfinished leaders rather than material, the Court of Customs and Patent Appeals commented (34 CCPA at 20):

> * * * We are of opinion, therefore, that each piece of the merchandise in question was dedicated to the making of a particular length of leader, which was not true in the *American Import Co.* case, *supra*, and that * * * the involved articles have been so far advanced that each has attained an individuality which identifies it in its unfinished state as the article it will be when finished. * * *

It is true, as pointed out by defendant, the imports were not dedicated to any particular size printing plates. Nevertheless, I cannot agree with defendant that such fact precludes the imports from the status of unfinished articles. The overriding fact remains that each NAPP plate, after processing, was dedicated to use as a single printing plate and "the involved articles have been so far advanced that each has attained an individuality which identifies it in its unfinished state as the article it will be when finished". *Bush, supra*, 34 CCPA at 20. The trimming, hole-punching and bending operations, which were required after importation, were not substantial manufacturing processes. As previously mentioned, it requires a mere 7 to 10 minutes to expose a page negative to the imported plates and prepare the plates for mounting on a particular letterpress by trimming, punching, and bending.

At the trial, defendant introduced in evidence (exhibit A) a copy of a letter dated June 6, 1972, written by W. A. Walsmith (plaintiff's then production manager) to the District Director of Customs at Chicago, Ill. Walsmith's letter states, inter alia, that the NAPP plates were imported in material form. However, it is important to note that Walsmith's letter was sent in response to a written questionnaire (exhibit B) by the District Director at Chicago as to whether the NAPP plates are "a stock size ready to fit a specific type printing machine" or "are * * * imported in material form so that they must

be cut to fit the press". It is evident from Customs' questionnaire and the response thereto that, in stating that NAPP plates were imported in material form, Walsmith simply adopted one of the two alternatives suggested by the District Director.[2] Significantly, the District Director did not suggest or inquire into the possiblity that NAPP plates were imported as unfinished articles. While Walsmith's letter admits that the NAPP plates required trimming (a fact not disputed by plaintiff), Walsmith's characterization of the NAPP plates as a material is not conclusive as to the legal issue in this case.

Plaintiff has directed attention to a recent decision by Judge Watson in *The Kinney Co.* v. *United States*, 83 Cust. Ct. 137, C.D. 4831 (1979). There, the issue was whether certain flat metal pieces subjected to processing after importation were classifiable as parts of jewelry or as articles of copper. The dispute revolved about whether the merchandise was unfinished or a material. In determining that the imports were unfinished parts, the court did not discuss the additional processing required after importation to complete the articles, and the linchpin of the court's decision is found in the following observation (83 Cust. Ct. at 139):

> Plaintiff's argument that the importations are not sufficiently advanced to be parts is ingenuous. They are clearly much too developed in form and in detail and too close to the final product to be considered mere material. * * *

By the same token, here the NAPP plates are far too advanced toward the ultimate product to be considered as mere material, and consequently I find they are unfinished articles.

Finally, we reach the question of whether the unfinished printing plates are parts of printing machinery, as claimed by plaintiff.

The record shows that the imported plates were designed for use in rotary letterpresses. There is no dispute that letterpresses are classifiable under item 668.20, TSUS (paragraph 10, complaint and answer), and that letterpresses cannot function for the purposes for which they were designed and intended without the use of printing plates (paragraph 15, complaint and answer). Additionally, plaintiff's evidence establishes without contravention that the imports were dedicated to use as printing plates for printing machinery. According to the Summaries of Trade and Tariff Information (1969), schedule 6, volume 8, p. 277:

> The Bureau of Customs has also held that item 668.50 covers such articles as printing plates that have not been engraved or otherwise prepared for printing * * *

[2] As to the other alternative suggested by the District Director, the NAPP plates clearly were not imported in stock sizes ready to fit a specific type printing machine.

Plaintiff also cites *Crabtree Vickers, Inc.* v. *United States*, 79 Cust. Ct. 13, C.D. 4707, *reh. denied*, 79 Cust. Ct. 60, C.D. 4714 (1977), which involved the proper tariff classification of certain aluminum plates coated with a photosensitive plastic used in printing machinery. While interestingly, the plates in *Crabtree* were classified by Customs as parts of printing machinery under item 668.50, TSUS (plaintiff's claimed provision herein), the present issue was not before the court in that case.

In conclusion, I find that the NAPP plates are parts of printing machinery, and fall within the purview of item 668.50, TSUS, as claimed by plaintiff. Therefore, the merchandise is properly dutiable at the rate of 6 per centum ad valorem, as provided for in item 668.20, TSUS, as modified.

Judgment will be entered accordingly.

Decisions of the United States Customs Court

Abstracts

Abstracted Reappraisement Decisions

DEPARTMENT OF THE TREASURY, *July 1, 1980.*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to Customs officials in easily locating cases and tracing important facts.

ROBERT E. CHASEN,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R80/204	Maletz, J. June 26, 1980	American Thermo-Ware Co.	R60/193, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Binoculars

R80/205	Maletz, J. June 26, 1980	Brother International Corp.	R64/946	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New Orleans Sewing machine head
R80/206	Maletz, J. June 26, 1980	Brother International Corp.	R65/9494, etc.	Export value	Appraised unit values less 7.5%, net packed	Agreed statement of facts	Chicago Sewing machines and consoles
R80/207	Maletz, J. June 26, 1980	Bruce Duncan Co., a/c Belvedere Distributing Co.	R63/523, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Los Angeles Sewing machines
R80/208	Maletz, J. June 26, 1980	Bruce Duncan Co., Inc., a/c Ezra Mallem & Son	R61/2265, etc.	Export value	Appraised unit values less 7.5%, net packed	Agreed statement of facts	Los Angeles Rugs
R80/209	Maletz, J. June 26, 1980	Hurricane Import Co.	R65/1174	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Seattle Floor coverings
R80/210	Maletz, J. June 26, 1980	Hurricane Import Co.	R64/13846	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	San Francisco Rugs
R80/211	Maletz, J. June 26, 1980	New York Merchandise Co., Inc.	R60/15794	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Honolulu Rugs

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R80/212	Maletz, J. June 26, 1980	New York Merchandise Co., Inc.	R61/6777, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Los Angeles Rugs
R80/213	Maletz, J. June 26, 1980	Selsi Co., Inc.	R61/9986	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values (binoculars) Unit value of U.S. $8.98, net packed (radios and cases)	Agreed statement of facts	New York Binoculars; radios and cases
R80/214	Maletz, J. June 26, 1980	Toyo Rug Co., Ltd.	R60/18231, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Philadelphia Rugs
R80/215	Maletz, J. June 26, 1980	Toyo Rug Co., Ltd.	R61/7233	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Boston Rugs
R80/216	Maletz, J. June 26, 1980	John L. Westland & Son, Inc., a/c Couri Murad & Co.	R58/28660	Export value	Various appraised unit values less 7.5%, net packed	Agreed statement of facts	Los Angeles Floor coverings

R80/217	Maletz, J. June 26, 1980	YKK Zipper Co. Inc. (Cal) et al.	75-2-00388, etc.	United States values	Equal to invoiced unit prices, net packed	Agreed statement of facts	Los Angeles Zippers and/or zipper parts classified under item 745.70, 745.72 or 745.74

Judgments of the U.S. Customs Court in Appealed Cases

JUNE 26, 1980

Appeal 79-32.—United States *v.* Texas Instruments Incorporated.—VISIBLE LIGHT EMITTING DIODES—WATCH AND CLOCK DIALS—ELECTRICAL INDICATOR PANELS OR VISUAL SIGNALLING APPARATUS—TSUS.—C.D. 4811 affirmed April 17, 1980 (C.A.D. 1243).

Appeal 79-33.—United States *v.* Texas Instruments Incorporated.—MONOLITHIC INTEGRATED CIRCUIT CHIPS—COMPONENTS OF SOLID-STATE ELECTRONIC WATCHES—ASSEMBLIES OR SUBASSEMBLIES FOR WATCH MOVEMENTS (OR CLOCK MOVEMENTS)—TRANSISTORS AND OTHER RELATED ELECTRONIC CRYSTAL COMPONENTS—TSUS.—C.D. 4810 affirmed April 17, 1980 (C.A.D. 1244).

Appeal to U.S. Court of Customs and Patent Appeals

Appeal 80–32.—United States *v.* David E. Porter.—SEATS FOR RAPID TRANSIT CARS—FURNITURE—PARTS OF RAIL VEHICLES OR CARS—TSUS—SUMMARY JUDGMENT. Appeal from C.D. 4808, as amended by C.D. 4857.

In this case transverse rapid-transit seats used exclusively in San Francisco Bay Area Rapid Transit (BART) rail vehicles were assessed at 10 percent ad valorem under item 727.55, Tariff Schedules of the United States, as other furniture. Plaintiff-appellee claimed that the merchandise was properly dutiable at 5.5 percent under item 690.40 as parts of rail vehicles or cars. The Customs Court held that the seats should be classified under item 690.40, supra, as claimed. Plaintiff's motion for summary judgment was granted and defendant's cross-motion for summary judgment was denied on June 22, 1979 (C.D. 4808). Plaintiff moved to amend the judgment entered on June 22, 1979, to include merchandise (window and longitudinal seats) inadvertently excluded by plaintiff in its motion for summary judgment. Defendant-appellant opposed the motion and requested that it be dismissed for lack of jurisdiction. Plaintiff's motion to amend the judgment was dismissed. Cross-appeals 79–30 and 80–1 were taken from C.D. 4808, and the Court of Customs and Patent Appeals remanded the matter to the Customs Court. The Customs Court in C.D. 4857 amended the judgment in C.D. 4808 to include window and longitudinal seats as properly dutiable under item 690.40, supra.

It is claimed that the Customs Court erred in granting summary judgment to plaintiff and in amending said judgment to include longitudinal and window seats, and in not entering judgment for defendant dismissing the action, based upon plaintiff's failure to meet its statutory burden as provided in 28 U.S.C. 2635; in not finding that the merchandise was classifiable under item 727.55, supra, as other furniture; in finding and holding that the merchandise is properly classifiable under item 690.40, supra; in finding and holding that the merchandise is most specifically described under item 690.40; in finding that the furniture provision is a residual provision; in finding that there was no specific congressional intent to include the subject merchandise within the furniture headnote.

International Trade Commission Notices

Investigations by the U.S. International Trade Commission

DEPARTMENT OF THE TREASURY

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs officers and others concerned.

R. E. CHASEN,
Commissioner of Customs.

(19 CFR 207.40)

Notice of Request for Public Comment on Termination of Countervailing Duty Investigation Concerning Certain Steel Products from Italy

AGENCY: U.S. International Trade Commission.

ACTION: Request for comments on proposed termination of countervailing duty investigations under section 704(a) of the Tariff Act of 1930.

EFFECTIVE DATE: June 27, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Leahy, Office of Investigations, telephone 202–523–1369.

SUPPLEMENTARY INFORMATION: The Trade Agreements Act of 1979, subsection 104(b)(1), requires the Commission in the case of a countervailing duty order issued under section 303 of the Tariff Act of 1930, upon the request of a government or group of exporters of merchandise covered by the order to conduct an investigation to determine whether an industry in the United States would be materially injured, threatened with material injury or that the establishment of such industry would be materially retarded if the order were to be revoked. On March 27, 1980, the Commission received a request from the Societa Anonima Elettrificazione S.p.a. for the review of the following countervailing duty orders:

Treasury decision establishing countervailing duty

Commodity:	T.D. No.
Galvanized fabricated structural steel units for the erection of electrical transmission towers	67–102
Certain steel products: Fabricated structural steel units for the erection of electrical transmission towers, not galvanized	69–113

The Commission has also been notified by letter that United States Steel, the original petitioner in these countervailing duty orders, wishes to withdraw its petition in T.D. 69–113 as to all of the nine product groups covered by that order pursuant to section 704(a) of the Tariff Act of 1930. The nine product groups are:

Commodity:

1. Steel pipes for penstocks, even armored, of the type used for hydroelectric installations.
2. Cables, ropes, plaits and such in iron or steel wire, with or without core of other materials, excluding those insulated for electricity; except as stated below: Galvanized steel wire rope, and stainless steel aircraft cable.
3. Staples in strip form.
4. Nails of iron or steel.
5. Bolts and nuts of iron or steel except as noted below: Galvanized nuts.
6. Rivets of iron or steel.
7. Forged steel grinding balls.
8. Wheels and axles of vehicles for railroads.
9. Iron and steel constructions and their parts, such as pieces for bridges, steel structural works, gates, frameworks, etc., not galvanized.

The legislative history of section 704(a) indicates that the Commission should solicit public comment prior to termination and approve the termination only if it is in the public interest. In the instant case, if the Commission terminated its investigation as to the nine product groups under T.D. 69–113 listed above, the Commission would then proceed to institute investigations on all products covered by T.D. 67–102 pursuant to section 104(b)(1) to be completed within 3 years after institution.

In light of the Commission's duty to consider the public interest, the Commission requests written comments from persons concerning the proposed termination as to the nine product groups previously listed covered by T.D. 69–113. These written comments must be filed

with the Secretary of the Commission no later than 30 days after publication of this notice in the Federal Register.

By order of the Commission.

Issued: June 30, 1980.

KENNETH R. MASON,
Secretary.

(TA–201–44)

CERTAIN MOTOR VEHICLES AND CERTAIN CHASSIS AND BODIES THEREFOR

Notice of Investigation and Hearings

AGENCY: U.S. International Trade Commission.

ACTION: On the basis of a petition properly filed on June 12, 1980, and on the Commission's own motion, the Commission on June 30, 1980, instituted investigation No. TA–201–44 under section 201(b)(1) of the Trade Act of 1974 (19 U.S.C. 2251(b)(1)) to determine whether automobile trucks, except automobile truck tractors and truck trailers imported together; on-the-highway passenger automobiles; and bodies (including cabs) and chassis for automobile trucks except truck tractors; provided for in items 692.02 and 692.03; 692.10 and 692.11; and 692.20 and 692.21; of the Tariff Schedules of the United States, are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

EFFECTIVE DATE: June 12, 1980.

SPECIAL PROCEDURE AND PUBLIC HEARINGS: In view of the complexity of the subject matter and the large volume of trade, the Commission has divided the 6-month investigative period into two segments of 4½ months and 1½ months, respectively.

During the first segment of the investigation, the Commission will consider the question of serious injury to the domestic industry under section 201(b)(1). At the close of this 4½-month period, the Commission will make its determination under section 201(b)(1). A public hearing concerning the question of injury will be held beginning at 10 a.m., e.d.t., Wednesday, October 8, 1980, in the hearing room of the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. 20436. A prehearing conference for the purpose of establishing time limitations for participants in this hearing will be held at 10 a.m., e.d.t. on Tuesday, September 16, 1980, in room 117

(the Sunshine Room) of the International Trade Commission Building in Washington. All persons wishing to appear at the hearing should so notify the Secretary to the Commission, in writing, no later than the close of business Monday, September 15, 1980.

To facilitate the hearing process, it is requested that persons wishing to appear at the hearing submit prehearing briefs enumerating and discussing the issues which they wish to raise at the hearing. Nineteen copies of such prehearing briefs should be submitted to the Secretary to the Commission no later than the close of business Wednesday, October 1, 1980. Copies of any prehearing briefs submitted will be made available for public inspection in the Office of the Secretary. While submission of prehearing briefs does not prohibit submission of prepared statements in accordance with section 201.12(d) of the Commission's Rules of Practice and Procedure (19 CFR 201.12(d)), it would be unnecessary to submit such a statement if a prehearing brief is submitted instead. Therefore, for the purpose of this proceeding, the Commission has waived the requirements of rule section 201.12(d). Any prepared statements submitted will be made a part of the transcript. Oral presentations should, to the extent possible, be limited to issues raised in the prehearing briefs. Posthearing briefs should be filed with the Secretary no later than the close of business October 17, 1980.

The second segment of the investigation, if necessary, will be concerned with the question of import relief to be recommended to the President under section 201(d)(1). (There will be no second segment if the Commissioners' determination under section 201(b)(1) is in the negative, since there will be no basis for recommending relief.) If there is a second segment, the Commission will hold a public hearing with respect to the question of relief beginning at 10 a.m., e.s.t., Monday, November 24, 1980, in the hearing room of the International Trade Commission Building. All persons wishing to appear at this hearing should so notify the Secretary to the Commission, in writing, no later than the close of business Thursday, November 13, 1980. A prehearing conference for the purpose of establishing time limitations for participants in this hearing will be held at 10 a.m., e.s.t., Friday, November 14, 1980, in room 117 (the Sunshine Room) of the International Trade Commission Building.

To facilitate this second hearing, it is requested that persons wishing to appear at the hearing submit prehearing briefs in accord with the procedures outlined above not later than the close of business Thursday, November 20, 1980. Posthearing briefs are not requested.

Persons not represented by counsel or public officials who have relevant matter to present may give testimony without regard to the suggested prehearing procedures outlined above.

In brief, the calendar of pertinent dates is as follows—

Injury phase

Staff report available—September 10
Notice of hearing appearance due—September 15
Prehearing conference—September 16
Prehearing briefs—October 1
Hearing—October 8
Posthearing briefs—October 17

Remedy phase (if necessary)

Notice of hearing appearance due—November 13
Prehearing conference—November 14
Prehearing briefs—November 20
Hearing—November 24

COMMISSION DATA AVAILABLE: The Commission will make available to requesting interested parties by September 10, 1980, a nonconfidential version of its staff-prepared prehearing report. It is hoped that data in this report will serve as a common statistical base for presentations at the hearings.

OTHER WRITTEN SUBMISSIONS: Other written submissions, except for posthearing briefs, should be filed with the Secretary to the Commission prior to the public hearing concerning the subject matter of the submission. Commercial financial data which is confidential should be clearly marked "Confidential business information" and should be submitted in accord with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Submissions should also conform to the general requirements of section 201.8 of the Commission's rules (19 CFR 201.8).

FOR FURTHER INFORMATION CONTACT: Mr. Larry Reavis, Investigator, 202–523–0296, or Mr. William Gearhart, advisory attorney, 202–523–0487.

INSPECTION OF PETITION. The petition filed in this case is available for public inspection at the Office of the Secretary, U.S. International Trade Commission, and at the New York City Office of the U.S. International Trade Commission located at 6 World Trade Center.

SUPPLEMENTARY INFORMATION: The petition in the matter was filed by the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW).

Section 201(d)(2) requires that the Commission transmit its report to the President not later than 6 months after the petition is filed, in this case by December 12, 1980.

By order of the Commission.

Issued: July 1, 1980.

KENNETH R. MASON,
Secretary.

In the Matter of CERTAIN COIN-OPERATED AUDIO VISUAL GAMES AND COMPONENTS THEREOF	Investigation No. 337–TA–87

Order

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Janet D. Saxon as presiding officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the Federal Register.

Issued: June 30, 1980.

DONALD K. DUVALL,
Chief Administrative Law Judge.

In the Matter of CERTAIN SHELL BRIM HATS	Investigation No. 337–TA–86

Order

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Donald K. Duvall as presiding officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the Federal Register.

Issued: June 30, 1980.

DONALD K. DUVALL,
Chief Administrative Law Judge.

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